L A N D T E N U R E I N

T H E C O O K I S L A N D S

With special reference to
the
Southern Cook Group

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'The productivity of the land and the social advancement of the people are dependent as much on the evolution of sound systems of land tenure as upon the development of improved agricultural practise.'

- Lord Hailey

Declaration

This thesis is based on original research conducted by the author during the course of a Research Scholarship in the Research School of Pacific Studies at the Australian National University.

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PREFACE

The authors of development programmes in the Pacific area today are more aware than their colonial predecessors of the significance of 'custom' as a factor to be reckoned with in the accomplishment of their objectives; an importance which remains regardless of whether custom is considered a helpful medium for facilitating the introduction of new ideas and techniques or an obstacle to innovation which has to be either overcome or circumvented.

For the most part, however, the acceptance of such a viewpoint has been in principle rather than in practice; and it is seldom indeed that the blue-prints of planning agencies have attempted to define the special segments of custom likely to affect the achievement of their aims, and even more seldom that detailed research has been undertaken to determine their precise nature.

The objective of this study is to examine a specific aspect of custom in a particular area: firstly, to determine its character and constituent traits in the pre-contact era; secondly, to identify and describe such modifications as were brought about by three generations of contact with European culture; and lastly, to describe and analyze the effects of modern administrative policies which are themselves essentially based on assumptions concerning such custom.

ACKNOWLEDGEMENTS

Should any of my friends care to read this study, they would probably consider that this fact or that idea originated from them, and in all probability it did, for I have drawn on the knowledge and views of others to such an extent that it is not possible to acknowledge or identify the specific contribution of each of them.

The need for a study of land tenure in the Cook Islands was first suggested to me by Mr J.B. Wright, then Secretary of the Department of Island Territories (now High Commissioner for New Zealand in Western Samoa), and through the good offices of Professor J.W. Davidson of this University, facilities were provided to permit the research to be undertaken. It has been my good fortune to have had the project supervised by Mr H.E. Maude who has freely given of his wealth of experience in practical dealings with land tenure problems in the Pacific, as well as of his vast knowledge of the ethnohistory of the region. In addition to most helpful suggestions as to the carrying out of the project, Mr R.P. Gilson has made available all his historical material on the area, including comprehensive notes extracted from British Colonial Office and Foreign Office files as well as London Missionary Society records relating to the Cook Islands.

Field work was made possible by a generous grant from the Australian National University and by facilities made available in the field by the Department of Island Territories and the Cook Islands Administration. To Mr J.M. McEwen,

Secretary of Island Territories, and to Mr Geoffrey Nevill (then Resident Commissioner of the Cook Islands) I am indebted for complete access to official records, and for encouragement and interest in the project. To Judge H.J. Morgan, Chief Judge of the Land Court, and to Mr L.H. Trenn, Registrar, I am deeply conscious of a debt of gratitude for advice and information, comments and criticisms and for the personal inconvenience to which they have put themselves to be of assistance; the more so because I fear that the evidence here presented at times suggests defects in the institution they so ably represent, though in no way reflects on the integrity of the men concerned, or denies either their tremendous knowledge of land administration in the Cook Islands or the competence with which they have executed their functions. The Secretary to the Government, Mr L.K. Pitt, the Chief Surveyor Mr A.A. Bailey, the Director of Agriculture, Mr M.B. Baker and his assistants, Mr W.R. Hosking, Mr A. Hornsby and Mr Raui Pokoati, all gave generously of their time and their knowledge.

To Pa Terito Ariki of Takitumu, and to Kainuku Ariki, Mr and Mrs C.T. Cowan (Tau Puru Ariki and Vaikai Mataiapo), Mr G. Crummer (Tangiiau Mataiapo), and Mrs Clara Gladney (Maoate Mataiapo), I am deeply obliged for the invitation to carry out field studies in the progressive tapere of Turangi ma Nga Mataiapo on Rarotonga. Not without reason, the Maori people are cautious of investigations into questions of land tenure, and the generosity of these chiefs and their people in giving a considerable amount of time as well as a wealth of information will never be forgotten.

Rongomatane Tetupu Ariki of Atiu, the Ui Mataiapo, Ui Rangatira, the people of Tengatangi village and of Atiu as a whole, will always be affectionately remembered by my wife and I for their hospitality and kindness, and for their

constant efforts to be of assistance in the researches carried out on their island. Mr Ian Robertson, Resident Agent, gave generously of his time and records; Teariki Maka Kea M.L.A. devoted the whole of his time to assisting the research; and Vaine Rere M.L.A., Tangatapoto, and Matakeu willingly gave of their store of historical lore.

Of the many others in the Cook Islands whose assistance is acknowledged, mention must be made of Mr Ned Marsters of Palmerston Island; and Dr John A. Numa, Mr Teariki Tuavera and Tamaiva Iro Rangatira, all of Rarotonga. Mr A.O. Dare, who assumed the post of Resident Commissioner since my departure, kindly supplied data on the recent experiment with the Mauke fern lands.

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In addition to the continuous guidance of Mr Maude and Professor Davidson the following persons read drafts and gave of their specialized knowledge on specific aspects of the work. Mr H.W. Sheffler of the Anthropology Department of the University of Chicago commented on chapters 2 to 6 and 12, Professor G. Sawer of the Law Department of this University read chapters 10, 12 and 15, Dr E.K. Fisk of the Economics Department assisted with chapters 13 to 15. Dr Emily Sadka of the Pacific History Department gave invaluable advice and assistance with the final revision of the whole work. While absolving them from any responsibility for the material here presented, I am nevertheless extremely grateful for their views, suggestions and criticisms.

The format, typography and preparation of duplimats has been handled by Mrs Aino Guenot with her customary precision and care and the maps were drawn in their final form by Messrs H. Gunther and J. Heyward. In addition to checking, correcting and suggesting improvements, a constant and stimulating encouragement has been provided at all times by my wife.

ABBREVIATIONS

AAAS	Report of the Second Meeting of the Australasian Association for the Advancement of Science, 1890
ABCFM	American Board of Commissioners for Foreign Missions archives, Boston, U.S.A.
AMB	Appellate Court Minute Book
ANU	Australian National University
ATL	Gurr papers, Alexander Turnbull Library, Wellington
CIA	Cook Islands Administration records, Rarotonga
DIT	Department of Island Territories records, Wellington
FAO	Food and Agriculture Organization of the United Nations
Hansard	New Zealand Parliamentary Debates
JAA	Journal of African Administration
JPS	Journal of the Polynesian Society
JRAI	Journal of the Royal Anthropological Institute
LEGAS	Proceedings of the Legislative Assembly of the Cook Islands
LEGCO	Proceedings of the Legislative Council of the Cook Islands
LMS	London Missionary Society archives, London
MB	Minute Book
NLC	Native Land Court records (including records of the Appellate Court)
NZG	The New Zealand Geographer
NZNA	New Zealand National Archives, Wellington
NZPP	New Zealand Parliamentary Papers
PRO	Public Records Office files, London, including records of the Colonial Office and Foreign Office (from notes by Mr R.P. Gilson)
PSI	Collection of vernacular Rarotongan manuscripts (largely anonymous) held by the Polynesian Society Incorporated, Wellington

SBC	Samoa British Consulate papers (from notes by Mr R.P. Gilson)
SSJ	South Seas Journals of the London Missionary Society
SSL	South Seas Letters of the London Missionary Society
SSR	South Seas Reports of the London Missionary Society
TBC	Tahiti British Consulate papers (held in the Mitchell Library, Sydney)
TLS	Transactions of the Linnaen Society of London, second series, volume 6
WPHC	Western Pacific High Commission records, Suva

GLOSSARY AND CONVENTIONS

The explanations given below have been kept as brief as possible and do not purport to be exhaustive. In particular, while many Maori[1] words have several meanings, only that which is relevant to the present study is given here. The Maori language, furthermore, does not alter the form of a noun in the plural, and this usage has been followed, while at the same time every effort has been made to avoid any confusion in the text on this account. Maori words which are used only once, and the meaning of which is explained, are not included in the glossary.

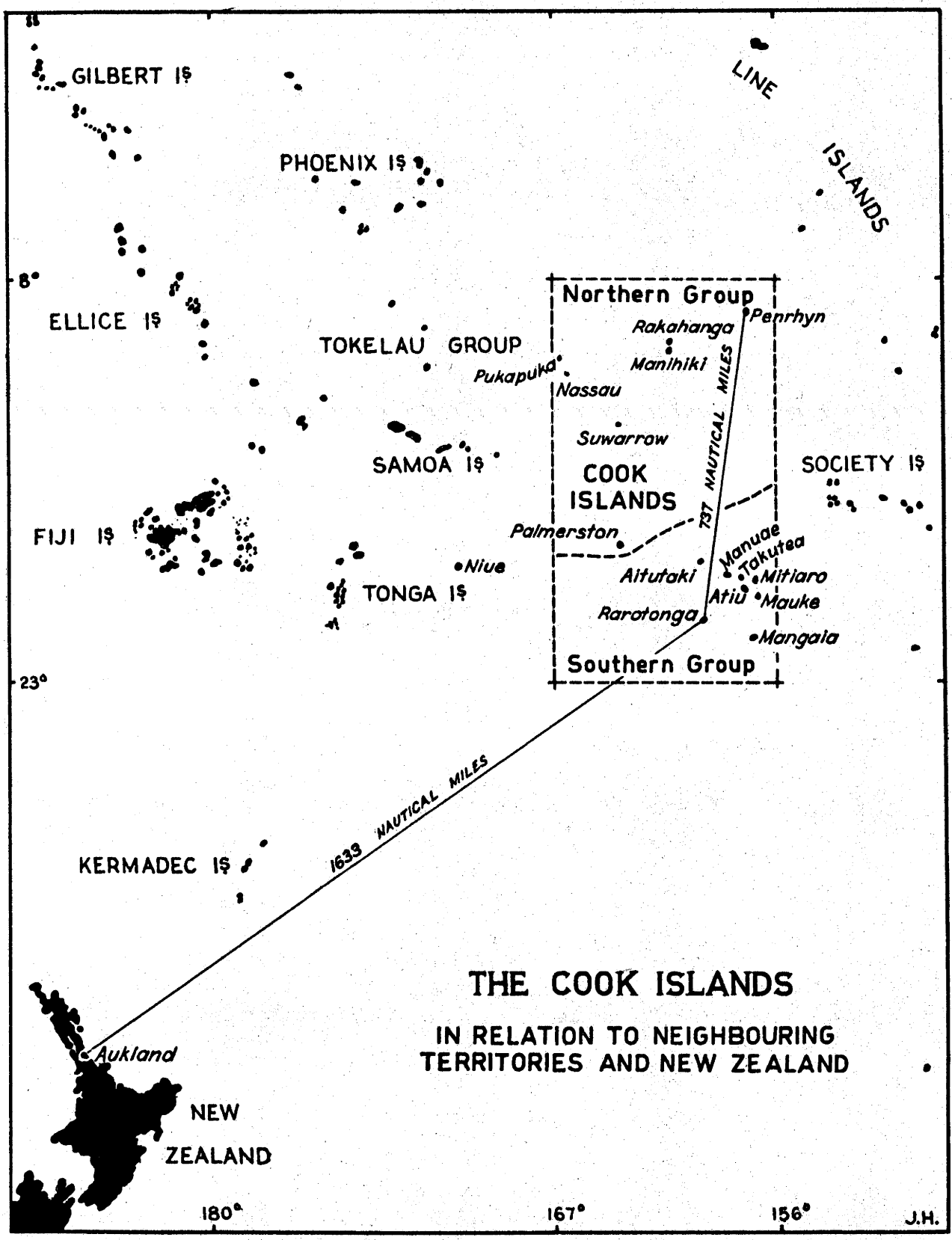
The common convention of underlining words in languages other than English has not been followed for two reasons: firstly because this is a study of a particular aspect of Maori culture, and in such a context it appears inappropriate to treat Maori words as foreign; and secondly because underlining has occasionally been used in the thesis to emphasize particular words or ideas, and the use of the same technique for two different purposes may cause confusion.

Word	Brief explanation
Akonoanga oire	The custom under which, when villages were formed at the instigation of the first missionaries, each family was allotted a house-site to be held in perpetuity (either unconditionally or subject to continued occupation, tribute or other conditions).
Aratiroa	The obligation to provide food and services for the entertainment of distinguished visitors.

[1] Note that the term Maori is used in this thesis with the meaning ascribed to it in the Cook Island dialects, i.e. referring to the indigenous people of the Cook Islands or to things pertaining to them.

Word	Brief explanation
Arevananga	The obligation to assist with labour, materials and food in the erection of buildings of a public nature (including the house of the ariki).
Ariki	A high chief, the titular head of a tribe.
Atinga	An offering, in pre-contact times usually a religious offering, but used today as a generic name for tribute.
Au	A local council having limited authority in certain parochial affairs.
Kainga tangata	A household.
Kiato	A branch or segment of a minor lineage.
Komono	The deputy of a mataiapo.
Kopu tangata	The kindred, or a member or members of the kindred.
Koutu	The 'royal court' of an ariki - for fuller definition see page 62.
Mana	Power, authority, influence.
Maori	The indigenous people of the Cook Islands, or things pertaining to them.
Marae	A sacred ground at which ceremonies of a religious nature were carried out.
Mataiapo	A chief of a major lineage. Each mataiapo was titular head of a tapere of land and the people who resided thereon.
Matakeinanga	The local group occupying a tapere, and composed of the residential core of a major lineage plus affines and other permissive members.
Motu	An islet within an atoll; or, an earth wall forming a boundary between taro patches.
Ngati	A descent group headed by a titleholder.
Puna	A nuclear family.
Rangatira	A lesser chief under an ariki or mataiapo.
Ra'ui	A customary prohibition on the use of resources or facilities.
Reo iku	A verbal will made by a person about to depart or to die.
Tapere	A sub-district, normally headed by a mataiapo or ariki, and occupied by a matakeinanga.

Word	Brief explanation
Taro	Colocasia esculenta, a starchy root vegetable.
Tapu	Sacred.
Tuika'a	A slave.
Uanga	An extended family, the residential core of which occupied a household.
Unga	A commoner.
Vaka	A tribe, or the territory occupied by a tribe.


GILBERT Is
PHOENIX Is
LINE
ISLANDS
8°
ELLICE Is
TOKELAU GROUP
Northern Group
Rakahanga
Penrhyn
Manihiki
Pukapuka
Nassau
Suwarrow
SAMOA Is
COOK
ISLANDS
737 NAUTICAL MILES
SOCIETY Is
FIJI Is
Palmerston
Manuae
Takutea
Niue
Aitutaki
Mitiaro
TONGA Is
Atiu
Mauke
Rarotonga
Mangaia
Southern Group
23°
1633 NAUTICAL MILES
KERMADEC Is
THE COOK ISLANDS
IN RELATION TO NEIGHBOURING
TERRITORIES AND NEW ZEALAND
Aukland
NEW
ZEALAND
180°
167°
156°
J.H.

Chapter 1

INTRODUCTION

This study is set in the Cook Group, an archipelago of fifteen tiny islands totalling only 88 square miles in area, yet scattered over 850,000 square miles of the Pacific Ocean between Tonga and Samoa on the one hand, and French Polynesia on the other. Since 1901 the group has been included within the boundaries of New Zealand, and its 18,000 people, who are culturally close relatives of the Maoris of New Zealand, are therefore citizens of that country.

The islands are divided physically into two groups. The Northern Group consists of seven islands of coral formation which constitute the central segment of that scattered band of atolls that sweeps across the Pacific from French Oceania to the Marshalls. The Southern Group islands are, with two minor exceptions, of volcanic origin, and all eight islands lie within a radius of one hundred and fifty miles of Rarotonga, the administrative headquarters of the Government of the Cook Islands. In area the islands range from Nassau which is only 300 acres, to Rarotonga which covers 16,602 acres. The population of the permanently settled islands ranges from 92 on Palmerston to 7,827 on Rarotonga; the total for the whole group being 18,041.[1] The total population of the group was approximately 18,000 at the time of first European contact but declined rapidly thereafter until it reached about 8,000 at the turn of this century. Since that time, however, it has regained its former level.

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[1] NZPP A3 1960:8.

The group lacks mineral deposits of commercial value, and its principal natural resources are the soil and the sea - though the potential of the latter is as yet little known. The soils vary considerably in their productive potential, but only 9,523 acres or 16 per cent of the total land area of the group is considered suitable for agriculture.[1] Of the balance, approximately 17 per cent is taken up by the infertile rubble and sand of the coral islands which can support little in the way of commercial crops other than the coconut, 27 per cent is taken up by second class soils which are suited to certain tree crops but which are at present relatively little utilized, and the remaining 40 per cent comprises the mountainous interior of Rarotonga and the makatea (upraised coral) outcrops of the other Southern Group islands which are at present completely unproductive.

The climate of the group is tropical and shows little seasonal variation. The mean annual temperature lies in the mid-seventies. Annual rainfall is about seventy to eighty inches and in general is well distributed throughout the year, except in the Northern Group where periods of drought are sometimes experienced. Hurricanes usually strike some part of the group once or twice in each decade, and the commercial productivity of the islands hit is severely disrupted for a year or more thereafter.

Of the wealth of truly indigenous vegetation found in the group, very little indeed makes any significant contribution to human welfare. The coconut, banana, breadfruit, taro and most of the other subsistence crops were introduced by the Polynesian immigrants to the islands in centuries past, and other crops like citrus, coffee and tomatoes came with

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[1] Figures in this paragraph are based on Fox and Grange, Soils of the Lower Cook Group, and NZPP A3 1960:8.

the wave of European expansion across the Pacific during the last two centuries.

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In the first part of the thesis an attempt is made to reconstruct the pre-contact land tenure system of Rarotonga, the largest and most populous island of the group. It was not possible to attempt a detailed description of the system of every single island as a basis on which to build a generalized model, owing to the time needed for such a task, and the inadequacy of the data available for the smaller islands. The main variations found to exist are between the systems applying on the atolls of the Northern Group and those of the high islands of the Southern Group, and are clearly imposed by environmental factors. Others, however, are attributable to differences in cultural origin - most markedly between the people of Pukapuka, whose origin lies in Western Polynesia, and those of the rest of the group, whose origin may be traced to Eastern Polynesia. To a lesser degree there are minor variations within each subgroup and even within individual islands, though no major differences are apparent between the islands of the Southern Group, which contains 85 per cent of the population and 86 per cent of the land area.[1]

In describing a land system as it was a century and a half ago, it is of course impossible to obtain the degree of accuracy which can be obtained by a contemporary field survey, but if a study of change is to be made, it is essential that it should start by determining the cultural situation as it was at the temporal baseline of the study -

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[1] With the possible exception of Mangaia, about which little is known. The results of recent anthropological researches by Dr Donald S. Marshall should be available shortly and will presumably clarify the tenure situation on that island.

in this case the moment of contact with European civilization.[1] Furthermore, in order to abstract the land tenure system from the totality of the culture, we must essay a more precise analysis of the nature of land rights and obligations recognized; the spatial, temporal, demographic and juristic dimensions of each right and obligation; and the social and political structure within which the rights were organized.

In reconstructing the pre-contact land tenure system of Rarotonga we have five major sources of evidence. In the first place we have the physical features of the island, which have had clearly discernible and important effects on land use and concomitant tenure; and with this may be coupled the archaeological record - marae and house sites, boundary marks and grave-yards, irrigation works and terracing. There is also the one paved road which is still clearly discernible and which led right round the island following the low-lying fertile strip, but there were no roads or paths across the mountains. Sub-surface archaeological research, on the other hand, though one of the most useful aids to reconstruction, has not yet begun on Rarotonga.

Our second source of evidence is the mass of recorded data left by members of the culture concerned, people who were in many cases active participants in the pre-contact tenure system but who naturally did not make written records until the art of writing had been introduced and the process of change had begun. Rarotongans, in common with many other Polynesians, have exceptionally long memories, particularly for names, relationships and incidents. Their memory for numbers and periods of time, on the other hand, is often very

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[1] The date of first contact has been taken as 1823, for, though Europeans had landed on the island in 1814, it was not until 1823 that the islanders experienced prolonged contact with European culture. Even then it was Tahitian missionaries who were the agents of change, for no European missionaries came to settle until 1827.

imprecise. For instance, most sources agree that Tangiia, who migrated to the island in the thirteenth century, was the son of Kaungaki, was adopted by his maternal uncle Pou te vananga roa, and had a protracted dispute with his cross-cousin Tutapu. In fact, the particulars of their relationships and controversies are given in considerable detail, and all the available accounts agree on the most significant points; but details of the number of voyages he made vary from one to a dozen and of the number of his followers from eight to four hundred.

The art of writing was first taught in 1824, but as matters of native custom were closely associated with heathen darkness little encouragement was given to the recording of affairs of the pre-Christian era until the arrival in 1851 of Wyatt Gill, a missionary ethnographer who took a passionate interest in pre-contact history and who during his thirty years of residence in the islands encouraged many men to record their knowledge of the old way of life.

One of the most important native manuscripts for far located is the four hundred page work of Maretu, an ex-cannibal who became a pillar of the church. He made no abstractions or interpretations and simply recorded what he remembered; any relationships described are between particular people and thus, while they may not bear wide generalization, they do provide instances of actual behaviour. When such behaviour conforms to Maretu's expectations, which in all probability means that it conforms to custom, he makes no further comment; when it does not, he feels constrained to explain further or pass judgement. While he never quotes any principles of land tenure, he does describe incidents which illustrate particular principles in action.

While Maretu speaks almost exclusively of his own lifetime, another Rarotongan, Terei by name, was a true historian

and his 25,000 word narrative begins with the disputes which arose in Tahiti, as a result of which his forbears migrated to Rarotonga about the thirteenth century. His description of the early political organization and of the original land divisions of the island is confirmed from many sources. Another major writer, Taraare, was probably the most prolific of all. He also begins with events of nearly a thousand years ago, and traces significant historical incidents from that time until the arrival of the mission. In addition to these main sources, over a hundred other manuscripts by more than a score of native authors have so far been located - dealing with mythology, with particular incidents, with the histories of particular families, and so on, in nearly every case containing particulars of some aspect of the pre-contact pattern of life.

The native records have the advantage of having been written by men who knew no other language and no other culture than their own.[1] On the other hand they suffer from the defect of their selectivity and partiality, for all the authors were either titled men or pastors, and each had the responsibility of preserving his own family's good name. This defect was to some extent unavoidable, as responsibility for preserving and passing on traditional knowledge lay with the lineage heads, who were necessarily titled men, and most commoners probably knew little of such arcane affairs.

Thirdly we have for evidence the records of external observers, persons whose impressions were based not on participation but on observation, and invariably through eyes which saw the situation in terms of cultures which differed markedly from those of the natives. The only known landings

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[1] These have all been studied in the vernacular, including the few which have been translated into English.

to have been made at Rarotonga prior to the arrival of the mission ship with the first Tahitian teachers in 1823 were from two trading schooners in 1814. But from 1827 onwards European missionaries resided there permanently, and for the next thirty years they were the only foreigners to make any lengthy stay at the island.

The early missionaries left about eight published works which deal significantly with this island but as more unpublished material becomes available their relative importance as source material is diminishing. The letters, journals, and reports of the missionaries have, however, been preserved and are very useful sources; since almost every month each missionary sent a detailed report to his directors in London, a journal had to be prepared for every missionary voyage, and reports had to be submitted every year. Despite a natural emphasis on ecclesiastical affairs these documents cover a very wide range of subjects, often describing customs or giving the background to disputes.

The advantage of these mission records lies in their detailed nature and frequency of recording, which affords a fairly constant picture of the march of events. All the missionaries understood and worked exclusively in the local dialect and they participated in almost every aspect of the local life. On the debit side, however, is the fact that, like all other foreign observers, the missionaries saw through eyes which were conditioned by a different culture, and though they understood the native language, they probably did not understand a number of the concepts expressed in it.

Other foreign observers were traders, whalers, travellers and warship commanders; persons whose visits were generally brief and for specific purposes, and whose writings accordingly provide relatively little information beyond details of trade, crops grown, names of local notabilities, and

broad general descriptions of the people and their customs. Some of the later visitors, like Arundel, who first visited the island in 1870, have left very detailed reports of the contemporary scene; while others, like Bourke, who annexed the island in 1888, and Moss, who arrived as first Resident in 1891, took the trouble to collect details of the land tenure system.

Fourth among the available sources are the results of such earlier researches as may provide information about various aspects of the pre-contact era. By far the most important collection in this category is that accumulated by the Land Court, which was established in 1902 and which during the next five years determined the title to almost every piece of land on the island. The court records now amount to more than 20,000 pages of evidence and decisions, including many claims which go back to the pre-contact era. Unfortunately the detailed evidence is not always given, and indeed in quite a number of cases the decision only is recorded, thus precluding analysis on a quantitative basis. Nevertheless, by preserving its records in excellent order, the Land Court has, to a notable degree, provided a unique repository of early historical information.

Our fifth source of evidence for pre-contact history lies in contemporary field-studies, which may provide some indications as to the nature of the system which existed earlier, for, despite many changes, there appears to have been a considerable degree of carry-over. Change takes place at different rates in different aspects of a culture, and land tenure is one of the aspects of Rarotongan culture in which change has come about much more slowly than in such fields as religion or education. A present-day survey by itself can give only the slightest indication of the tenure system in the 1820s, yet in conjunction with the other sources

mentioned it can not only give useful leads, but also at times give confirmatory evidence where the earlier sources are indicative but not conclusive. Also, present-day informants, while they do not know the pre-contact era at first hand, may well possess some traditional knowledge of pre-contact custom.

Finally, some inferences may be drawn from a knowledge of other tenure systems, particularly those in related groups of islands possessing a similar socio-political organization. These may give clues to correlations which may be sought, or show whether circumstantial probabilities are consistent with actualities elsewhere. Deductions made on this basis can only be in the nature of probabilities, but in some cases even these may be of relevance.

Each of the above sources has its inadequacies, but each helps to clarify the outlines of a situation which no longer exists; at least not in its pristine form.

The second part of the study is concerned with the effects of European contact on the tenure system during the nineteenth century. Here the records of the missionaries are the most detailed, though not necessarily the most objective; and they are supplemented by the reports, diaries and publications of naval and other marine officers, traders and travellers, as well as by the files of the British Colonial and Foreign Offices, the New Zealand Government and the Western Pacific High Commission. The evidence for this period, however, particularly in so far as it relates to competition for land, is heavily weighted in that it is generally concerned with expressing the viewpoint of the European and much less frequently with that of the Maori. There are, it is true, some records by Maoris, and some of the early records of the Land Court contain valuable evidence by Maoris, but the Land Court, too, was a European institution, and, in its early years at least, no less liable to prejudices

than other interested parties. For the most part, therefore, Maori attitudes and opinions during this era have to be deduced from non-Maori sources.

For the final section, which deals with administrative policies and their effects, a considerable amount of material was available from official files and records (including those of the Land Court), as well as from a field study carried out from March 1959 to May 1960. The first month was spent in New Zealand consulting the records of the Department of Island Territories, and material in the Alexander Turnbull Library, the Polynesian Society and the Auckland Institute Library. From April 1959 to January 1960 was spent in the Cook Islands, where detailed field surveys were carried out in the Tengatangi district of Atiu, the four contiguous tapere known as Turangi ma Nga Mataiapo at Ngatangiia on Rarotonga and on the island of Palmerston. At Rarotonga the relevant records of the Land Court and the central administration were also examined. The Department of Island Territories and the Cook Islands Administration generously gave unrestricted access to files and documents, but while these were studied in some detail I have refrained from referring to those which are not normally available to the public. January to May 1960 was spent in field studies in Tonga and Western Samoa, but time and the volume of material collected has precluded the inclusion of comparative data from these sources.

In some aspects, and in particular those relating to the effects of decisions of the Land Court on the functioning of the tenure system, the analysis is at times rather critical. This criticism is not intended to be negative, but it is felt that the existing situation cannot be adequately understood, nor can remedial action be effectively taken, unless the causal factors are clearly identified. Nevertheless, there

is always a temptation for one who looks on from the outside to drive the scalpel too deep, forgetting the fact that the analytic tools of today were not available to policy-makers in the islands earlier in the century. Likewise, it is easy for one who has no other function than to observe, compare and analyze, to be critical of the actions of those whose responsibility is to carry out a policy while isolated from information about comparable situations elsewhere, and while overburdened with a multiplicity of other duties which must be attended to. Theirs is indeed an invidious task.

In the final chapter an attempt is made to draw together the conclusions which arise from the study as a whole and to suggest some possible alternative approaches to the solution of the more serious problems thus brought to light.

P A R T O N E

THE PRE-CONTACT LAND TENURE SYSTEM OF RAROTONGA

Chapter 2

HISTORICAL BACKGROUND - c. 875 TO 1823 A.D.

This period of nearly a thousand years covers the whole span of Rarotongan history from the inception of human settlement about 875 A.D. until the arrival of European missionaries in the year 1823. The only cultural influences throughout came from contact with members of the Polynesian race and such cultural changes as took place were therefore either the result of purely local developments or else of influences emanating from other parts of Polynesia; this being in marked contrast to the period which followed, in which the main changes resulted from contact with an entirely different culture.

In the present chapter an attempt will be made to reconstruct, from the various accounts of Rarotonga's pre-contact history, as consistent a picture of the march of events as the evidence will permit. Clearly the sources speak only from tradition, except for the decades immediately preceding 1823, for there could be no contemporary documentation until the art of writing had been introduced. Nevertheless, despite a considerable diversity of detail, there still remains a marked degree of agreement on the salient historical landmarks.[1]

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[1] The following works were consulted in connection with the pre-European history of the island: Best, JPS 36:122-34; Buck, Vikings of the Sunrise 112-16, Arts & Crafts of the Cook Islands 11-13; Cowan (Tau Puru Ariki), Tumu Korero 1:9-11, 2:4-7, 6:2-4 + 13-14, 9:4-9, 10:5-9; Fraser, JPS 6:72-3; Gill, Wm., Gems from the Coral Islands 2:3-4; Gill, Wyatt, JRAI 6:2-8, AAAS 627-36; Gudgeon, JPS 12:51-61 + 120-30; Itio MS; Kiva, JPS 6:1-6; Manuiri, JPS 5:142-4; Matatia, JPS 4:99-131; Maretu, MS; More, JPS 19:142-68; Native Land Court files; Nicholas (translator), JPS 1:20-29;

Early settlement

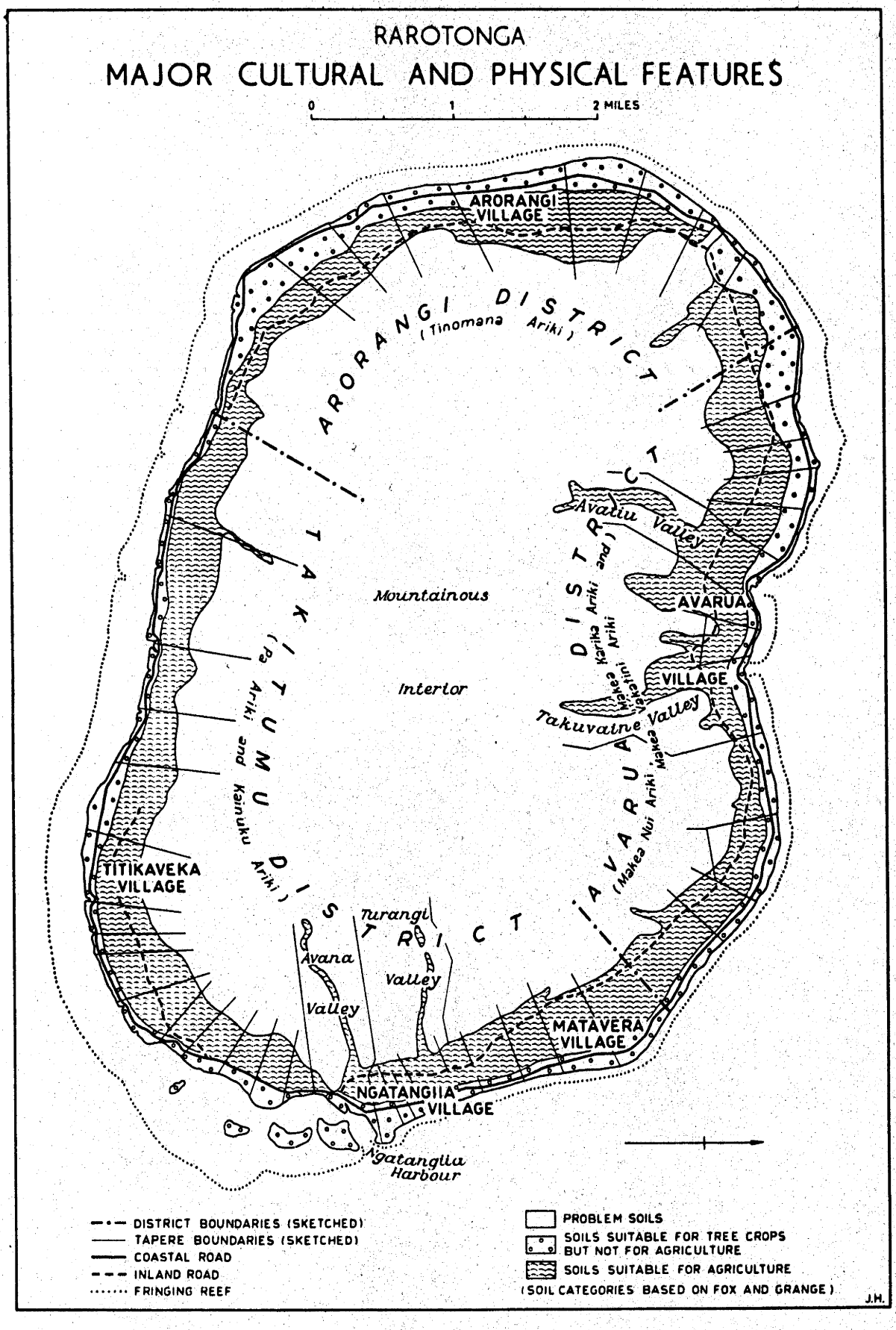
While excavation and radio-carbon dating may eventually reveal a relatively precise date for the initial colonization of the island, we are dependent for the present on traditional accounts. These record the arrival of various immigrant canoes, with subsequent settlement and wars, and the building of a road round the island, all long before the arrival of the voyager Tangiia about the year 1200 A.D.[1] In particular the road, which is about 15 miles long and paved for most of its length, is said to have been constructed under the direction of Toi, who lived about 1050 A.D.; and it suggests the existence of a considerable population even at that relatively early period.[2]

Early records often refer to these first settlers as the 'Mana'une' or 'Tangata enua' (people of the land), but there is no evidence to indicate that they were other than Polynesians. The first of them landed at the harbour now known as Ngatangiia and established themselves in the nearby Avana valley. It is from these people that the Kainuku line of chiefs trace their descent. Most records show them as having come from the island of Iva in what is now French

1 (continued from previous page)
Numa, MS; Pitman, Journal, passim; Polynesian Society, Collection of vernacular MS - largely anonymous; Putua, JPS 6:6-10; Savage, 'Iro Nui Ma Oata', Smith, Hawaiki passim, JPS 12:218-20 and 16:175-88; Tama, JPS 15:209-19; Taraare, JPS 8:61-88 + 171-8, 28:183-208, 29:1-19 + 45-69 + 107-27, 30:129-41, also MS; Ta'unga, MS; Toarua, JPS 20:139-43; Teaia, JPS 2:271-9; Terei, Tuatua Taito, JPS 26:1-18 + 45-65; Vakapora, JPS 20:215-18; Williams, A Narrative of Missionary Enterprises in the South Sea Islands passim; Williamson, The Social and Political Systems of Central Polynesia 1:263-82.

1 Smith, on the basis of genealogical evidence, gives the year 875 A.D. as the nearest estimate of the date of first settlement. - Hawaiki 208.

2 A full discussion of the known history of Toi is given by Smith, who concludes that the road was built about six generations before the arrival of Tangiia. - JPS 16:175-88. Fletcher, in a more recent survey, puts the time of Toi over a hundred years before Smith's estimate. - JPS 39:315-21.


RAROTONGA
MAJOR CULTURAL AND PHYSICAL FEATURES
0
1
2 MILES
ARORANGI VILLAGE
ARORANGI DISTRICT
(Tinomana Ariki)
TAKITUMU DISTRICT
(Pa Ariki and Kainuku Ariki)
AVARUA DISTRICT
(Makea Nui Ariki, Makea Karika Ariki and Makea Takitini)
Avatiu Valley
Mountainous
Interior
AVARUA VILLAGE
Takuvaine Valley
TITIKAVEKA VILLAGE
Turangi Valley
Avana Valley
MATAVERA VILLAGE
NGATANGIIA VILLAGE
Ngatangiia Harbour
DISTRICT BOUNDARIES (SKETCHED)
TAPERE BOUNDARIES (SKETCHED)
COASTAL ROAD
INLAND ROAD
FRINGING REEF
PROBLEM SOILS
SOILS SUITABLE FOR TREE CROPS BUT NOT FOR AGRICULTURE
SOILS SUITABLE FOR AGRICULTURE
(SOIL CATEGORIES BASED ON FOX AND GRANGE)
J.H.

Polynesia.[1] Nothing is known of their land-holding system, except that by discovery and settlement the land was theirs; but discovery and settlement, the primary claims to land in the group, had to be reinforced by the ability to defend them from aggressors. Several other immigrant canoes arrived during the succeeding generations and wars ensued.[2] These conflicts resulted in some migrations away from the island, but the Kainuku party were among the victors who remained.

The traditional evidence available then indicates that at the close of this phase the island was populated by people who traced their origin from Iva - somewhere in Eastern Polynesia. The land was now held by conquest, and throughout the pre-European period rights held by conquest superseded all other rights in land.

The second phase opened with the arrival of two independent parties of settlers, towards the end of the twelfth century. The one party, led by Tangiia, came from the island of Raiatea in the Society Group.[3] The other came from the island of Manu'a in the Samoa Group under the leadership of a chief named Karika.[4] They are the best known of the

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1 Iva is variously described as Nukuhiva (e.g. by Gill, AAAS 629), as Hiva'oa (e.g. in JPS 2:271), or as a place name in Raiatea (e.g. in JPS 6:9). However, all these islands are part of what is now French Polynesia. Indigenous writers do not attempt to give the location of the island of Iva.

2 Some of the later immigrants also came from Iva, and others from a place called Atu-apai. The latter place is believed by some to be Haapai in the Tonga Group, but as most of this party was wiped out in battle their point of origin is not important.

3 All sources except two agree that Tangiia came from the Society Islands. The two exceptions (Terei, Tuatua Taito 6-8 and a translation by Stair from a Rarotongan missionary's account in JPS 4:99-131) show Tangiia as having come originally from Upolu and thence having travelled to Tahiti, whence he proceeded to Rarotonga. While they assumed Upolu to have been the island of that name in Samoa, Leverd notes that Upolu was the ancient name of the island of Taha'a in the Society Group. - JPS 19:176.

4 All sources give Manu'a as Karika's island of origin.

progenitors of the present population of the island, and in all probability every Rarotongan of today is descended from one or both of them - and some can in fact trace that descent.

While all accounts indicate that the two parties arrived at about the same time, some claim that Tangiia was the first to arrive and others that Karika was. Similarly, while all accounts show them to have been on amicable terms, some claim that Tangiia's was the paramount or most influential party, and others that the supremacy lay with Karika's party. It all depends on whether the author of the account concerned identified himself with the one party or the other.[1]

The number of persons in each party can only be a matter of conjecture for while some traditions do not comment on number, others give varying numbers up to a maximum of 400 in Tangiia's party, and 140 in Karika's. Likewise, the sexual composition of Tangiia's party is in doubt. Some claim that he brought his womenfolk with him, others that it was a canoe-load of warriors only. All agree, however, that Karika did bring at least one woman, a daughter, whom Tangiia took to wife.

Perhaps the strongest force unifying the two groups was the necessity for defence, for shortly after their arrival on the island Tutapu arrived in pursuit of Tangiia with whom he had a long-standing quarrel. Tangiia sought the aid of Karika's party to repulse the invaders, who were subsequently killed to a man. After Tutapu, other canoes arrived from

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[1] An analysis of the various accounts shows that those written by or collected from descendants of Tangiia claim that he was paramount. Reports from Karika's descendants, on the other hand, show him in this role. The various accounts, nevertheless, agree on many significant points. Gilson has aptly noted that 'this unwritten history was a flexible instrument subject to wide variation in order to rationalise partisan claims and de facto political situations'.- 'Administration of the Cook Islands' 22.

time to time, and, while in some cases their occupants were attacked and killed, in others they were absorbed into the society.

The subsequent history of the island can be more easily followed if we deal separately with each of the three tribes which were in existence in the year 1823, tracing the development of each from these early forbears.

Takitumu: the tribe of Tangiia

Takitumu was the name of Tangiia's canoe and this name was applied both to the tribe which traces its descent from men who travelled to Rarotonga in that canoe, and to the district which they occupy. Though he was from a chiefly family, Tangiia was not himself a man of high rank. No tradition records his relationship to other members of his party, though some refer to them vaguely as his kopu tangata (cognatic kinsmen). The only exceptions to this generalization are Pa and Tinomana. Pa was adopted by Tangiia, but was a son of the renowned Tahitian chief Iro. Being of such high rank, Pa was later made titular head of the Tangiia tribe and it is through him that the Pa Ariki line of high chiefs trace their descent. Tinomana, of whom more details will be given later, was the son of Tangiia.

The other line of high chiefs of the Takitumu tribe today is that of Kainuku Ariki. The Kainuku people trace their descent from those early settlers who were living on the island at the time of Tangiia's arrival and who formed an alliance with Tangiia's people. Whether or not this union was preceded by conflict or threat of conflict is not known though the resident party were given only a minority role in the affairs of the group.[1]

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[1] Te Aia says that Tangiia was on friendly terms with the people already established on the island, 'and made them his own people, and he assumed to himself and his children the

Though closely linked with the Tangiia people by marriage, Kainuku's party has retained its separate lands and separate identity. At the time of arrival of the missionaries, and apparently for some time before, Pa and Kainuku were joint chiefs of the tribe. They remain so to this day. In parochial affairs Pa generally takes responsibility for the eastern section, and Kainuku the southern section. Pa's people are the more numerous, however, and in matters concerning the whole tribe Pa often acts as sole spokesman. Despite this tendency for Pa to be deferred to as the more influential, both are high chiefs of the same rank.[1]

Some or all of Tangiia's men were elevated to the rank of mataiapo (chief) and each was allotted a block of land running from the mountain to the coast. These blocks, known as tapere, are the most important land divisions on the island. Each mataiapo settled with his family on the tapere lands and formed the nucleus of a new settlement.[2] The descent group which derived from each of these original chiefs became the focus of land-holding within the tapere. While owing allegiance to one or other of the high chiefs, the mataiapo enjoyed a considerable degree of independence.

While tradition states that this land division occurred shortly after Tangiia's arrival, it seems unlikely that each of the men could have established a viable unit so soon. It

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1 (continued from previous page)
position of ariki over all the mataiapo of Tongaiti...so that he had everyone under him, including his own mataiapo'. (Tongaiti is the name frequently given to the party in occupation of the land at the time of Tangiia's arrival.) - Te Aia, JPS 2:275. It will be noted, however, that the leaders of the Tongaiti party were given the status of mataiapo (i.e. semi-independent chiefs), though of the total number of these titles created the Tongaiti received only a small proportion.

1 Kainuku is today (and has been for many generations past) an ariki title, but I can find no reference to its being of this status in Tangiia's time.

2 Nicholas (translator), JPS 1:23.

is more probable, therefore, that this phase did not occur until after the new arrivals had settled down and begun to expand in numbers, for all are said to have come in one canoe. They may have chosen wives from the earlier inhabitants or, alternatively, more migrants could have been brought from Raiatea, for some traditions record return visits to that island.

Each mataiapo had his own marae,[1] which was located within the tapere near the place of settlement. By the time of first European contact some mataiapo had two or three marae,[2] but it is assumed that this was the result of later developments. Each high priest (ta'unga) likewise had his marae and also a tapere of land for, in his non-priestly functions, his role was the same as that of a mataiapo.

Early in the period of settlement the title of komono was created, one holder being appointed by each mataiapo as his spokesman and deputy. Komono (which may be translated literally as 'deputy') probably began as the name given to the person who was next in seniority to the mataiapo, but in time it became an hereditary title under the mataiapo.[3] Also below the mataiapo in the rank hierarchy were the rangatira, and though it is not clear just at what stage this title began to be bestowed, it appears in the tradition later than that of komono. By the time of first European contact each ariki had up to a dozen or more rangatira, and most mataiapo had several. The original rangatira are said to have been the younger brothers of the early ariki and

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1 A sacred ground enclosed by low stone walls in which ceremonies of a religious nature took place.

2 Maretu, MS 33-59.

3 One account states that komono were appointed at the same time as the mataiapo, but this is the only tradition which mentions komono at that early date. - Nicholas, JPS 1:23.

mataiapo, and were given this title when they established separate units within the tapere.[1]

Karika's tribe: Te Au o Tonga or Avarua

The tribe which traces its descent from Karika was known as 'Te Au o Tonga' and this name was likewise applied to the district they occupied. In recent years the name has fallen into disuse to be superseded by the name Avarua, and this latter name will be used throughout. The evidence is not clear as to when this tribe became established, or just when Avarua became recognized as a separate district. It was Tangiia who organized the division of the whole island into tapere and was responsible for the allocation of the lands, and he, too, organized the building of the marae at intervals around the island and the appointment of chiefs to take charge of each of them. High priests were chosen for each of the two parties:[2] five for Tangiia's party, and one for Karika's, though at a much later stage one of Tangiia's high priests (Potikitaua) transferred his allegiance to the Karika party.

Karika himself and some of his followers left the island after some years of residence and set sail for Iva, never to return. However, not all his party left, and those who did not maintained marriage connections with the people of Tangiia.[3] The direct line from Karika was preserved on the island by a man with the title name of Makea who is variously described as a son of Karika or as a grandson of Karika born of the union of Tangiia with Karika's daughter.

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1 Savage, 'Dictionary of the Rarotongan Language'. The creation of four rangatira titles in Avarua by promotion of the younger brothers of the ariki is described in MB 1:319 NLC. This instance would have occurred circa 1790.

2 The criteria of selection of the priests is not given in any account. Quite possibly they were from priestly families in their islands of origin.

3 Traditions record that some men of Tangiia's party also voluntarily joined the Karika faction.

By the time of arrival of the first Europeans the Tangiia and Karika parties were politically separate entities, and Makea was the ariki title of the Avarua district, but this division was of relatively recent origin. In the eighteenth century the Makea title was divided into three branches.[1] This division occurred as a result of the then title-holder elevating the eldest son of each of his three wives to the rank of ariki. Though all were of equal rank, the Makea Nui Ariki has since the period immediately preceding the arrival of the gospel exerted greater political influence than either of the other two.[2]

The title of mataiapo was not used in this district, nor, consequently, was that of komono.[3] The next rank below the ariki was that of rangatira, who, though generally appointed from the junior ranks of the ariki family, were occasionally chosen from right outside the family group.[4] The rangatira do not trace back to a member of Karika's canoe, but rather

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1 Known as the Makea Nui (or Makea Pini), Makea Karika, and Makea Vakatini respectively.

2 'The custom has always obtained in Te au o Tonga that whilst both kings enjoyed regal honours, only one wielded authority, wielding it, however, in the name of both Makeas.' - Gill, AAAS 628. Gill's reference to only two holders of the title at this time was due to the fact that the Vakatini title was then in eclipse and did not emerge again as a recognized ariki title until later in the century. Pitman, the first European to reside on the island, refers in his Journal to Makea Nui as the only ariki in Avarua. As he had considerable dealings with the people and records many meetings which Makea attended, it is apparent that the Makea Nui (whose personal name was Pori) was paramount at this time. There is ample evidence to indicate that the Makea Nui title has in fact been paramount since pre-contact times.

3 There are seven mataiapo in this district today, but these broke away from the Takitumu district after the arrival of the mission.

4 For example, two of the leaders of the Uritaua party which landed in Rarotonga about 1600 A.D. were later made rangatira by Makea. - MB 5:119 NLC. Savage says that although normally selected from the younger branches of the ariki and mataiapo families, 'the ariki or mataiapo has the right to appoint any person who is not a member of the family as a rangatira for some particular service'. - 'Dictionary...'.

to Karika himself through some holder of the Makea Ariki title. The territorial subdivisions of this district were also called tapere and, in contrast to the general pattern, some of the lesser of them were headed by rangatira. The information available as to the circumstances of the origin of these tapere is inadequate, though it appears that they, too, had once been headed by ariki or mataiapo, but subsequently allocated to the rangatira of later conquerors.

There is considerable evidence to suggest that, by 1823 at least, the holder of the Makea title exerted much greater political influence over his tribe than did either Pa or Kainuku over theirs. Likewise, it appears that Makea had much greater influence over land matters within his tribe than did any other ariki on the island, but, as this question has been a matter of some controversy, it is necessary to enumerate the reasons for this opinion. While the power of the ariki of Takitumu was diffused by the existence of mataiapo and komono, that of the Avarua ariki was not. Each mataiapo had his own marae as well as his own lands and as there were about thirty mataiapo in the Takitumu district, they constituted a very powerful political group. There was no equivalent restraint on the Makeas.

While a wide range of terminology is used to describe the situation, the following sources give an indication of the relative status of the mataiapo of Takitumu and the rangatira of Avarua (who were, of course, next in line to the ariki in this district). Moss considers the mataiapo to have been the most powerful class on the island, who in a large measure controlled the actions of the ariki. Rangatira, on the other hand, he regarded as tenants at will under the ariki or mataiapo, whom Moss considered to have been the landowners.[1] Williams describes mataiapo as

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[1] Moss, Fortnightly Review 54:778. He, nevertheless, says that they were 'irremovable, by time-honoured custom, so long as the due services [were] performed'.

'governors' and rangatira as 'landholders'.[1] William Gill describes the Avarua tribe as being 'governed by the Makea family', but the Takitumu tribe as 'a confederate body of independent landholders'.[2] He classes the mataiapo as 'independent landholders' and the rangatira as 'dependent tenantry, having certain privileges which distinguished them from the mass of common people'.[3] In 1869, when the London Missionary Society obtained written deeds confirming the grants of land earlier given to their missions, it was the mataiapo who ceded the land in Titikaveka, Matavera and Ngatangiia.[4] In Avarua, on the other hand, it was done by the ariki.[5] As the Avarua district was only about one quarter of the area of Takitumu, and as the population was less than half,[6] it would be more feasible for the ariki in the former district to wield direct authority.

The origin of the different political structures (and consequently the landholding systems) may alternatively be sought in the respective Tahitian and Samoan origins of the two groups. However, the evidence indicates that the Samoan immigrants contributed but little to the culture of Rarotonga as it was at the time of first European contact. As some authors stress the Samoan connections of the Karika party beyond the point which the available evidence can support, the issue requires some elaboration.

Firstly, the language of Rarotonga is derived from and closely related to that of Tahiti, whereas it shows

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1 Williams, A Narrative... 216.

2 Gill, Gems... 4.

3 Ibid. 12.

4 All places within Takitumu district.

5 L.H. Trenn - personal notes.

6 Details of population are given on page 45.

comparatively little connection with that of Samoa.[1] Secondly, according to Burrow's list of culture traits which differentiate Western Polynesia (which includes Samoa) from Central-Marginal Polynesia (which includes both Rarotonga and Tahiti), Rarotonga shows a high correlation with the latter and a very low correlation with the former.[2] Thirdly, traditions almost invariably speak of Tangiia's party as being more numerous than Karika's, and the activities undertaken by Tangiia's party support this.[3] Fourthly, the previous inhabitants of the island, who also trace their origin to Eastern Polynesia, joined themselves to Tangiia's group. Fifthly, some of Tangiia's men joined Karika's party, and there is some doubt as to whether the original Makea was the son of Karika or his grandson by Tangiia from Karika's daughter. Finally, after some years of residence, Karika himself and some of his followers left the island and never returned.

The different authority structure and the different degree of power wielded by the Makea ariki as opposed to other ariki on the island can best be understood by viewing

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1 Elbert, South-Western Journal of Anthropology 9:147-73.

2 These are tabulated and discussed by Vayda in American Anthropologist 61:817-28. See also Burrows, Etnologiska Studier 7:1-192. Buck, in a table showing diffusion of culture traits within Polynesia, shows that the six listed traits which apply to Rarotonga all apply identically to the Austral Islands, and with one exception to Tahiti. Not one applies to Samoa. - Buck, Arts and Crafts... 487. On page 525 of the same work Buck presents a chart of cultural derivation of various islands, which shows Cook Islands society as a direct derivative of the Society Islands, and bearing no close relationship to Samoa.

3 Many references are made to there being eight or nine named subgroups within Tangiia's party, to the many warriors who accompanied him and later became mataiapo, and to the numerous marae they constructed. None of the traditions mention the names of any of Karika's party with the exception of a daughter and a son. This does not necessarily indicate that their numbers were few, as Karika and some of his party left the island and never returned, and thus the Karika traditions may have been less well recorded. However, this would only tend to substantiate the point that their long-term influence on the culture was inconsequential.

other crisis on the island can best be understood by viewing the different authority structures and the different degrees of power wielded by the Mahoe family as opposed to its fullness left the island and never returned.

After some years of residence, Kerika himself and some of his grandson by Tangila from Kerika's daughter. Finally, to whether the original Maiea was the son of Kerika or Tangila's men joined Kerika's party, and there is some doubt joined themselves to Tangila's group. Fifthly, some of the island, who also trace their origin to Eastern Polynesia, party support this. Fourthly, the previous inhabitants of than Kerika's, and the activities undertaken by Tangila's invariably speak of Tangila's party as being more numerous low correlation with the former. Thirdly, traditions almost Rarotonga shows a high correlation with the latter and a very Marginal Polynesia (which includes both Rarotonga and Tahiti), Eastern Polynesia (which includes Samoa) from Central- according to Burrow's list of culture traits which differen- tiate Western Polynesia (which includes Samoa) from Central- comparatively little connection with that of Samoa. Secondly,

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1 Elbert, South-Eastern Journal of Anthropology 9:147-73.

2 These are tabulated and discussed by Yayda in American Anthropologist 61:217-29. See also Burrows, Ethnohistory Southwestern VII-192. Brown, in a table showing distribution of culture traits within Polynesia, shows that the six listed traits which apply to Rarotonga all apply identically to the Austral Islands, and with one exception to Tahiti. Not one applies to Samoa. - Brown, Arts and Crafts..., 487. On page 525 of the same work Brown presents a chart of cultural de- rivation of various islands, which shows Cook Islands society as a direct derivative of the Society Islands and departing to close relationship to Samoa.

3 Many references are made to there being eight or nine named subgroups within Tangila's party, to the many warriors who accompanied him and later overcame Matangbo, and to the numerous names they constructed. Some of the traditions mention the names of any of Kerika's party with the exception of a daughter and a son. This does not necessarily indicate that there were few, as Kerika had some of his party left the island and never returned, and thus the Kerika traditions may have been just well recorded. However, this would only tend to substantiate the point that their long-term influ- ence on the culture was inconsequential.

the Avarua district as an overgrown tapere. In the initial land division each ariki and mataiapo was given a tapere of land, usually comprising a valley in the mountains and the flat land which fronted the valley. By the time of first European contact the Makea Ariki was dominant over the Takuvaine and Avatiu valleys, though it is apparent that this had not always been the case and that this status had been achieved after many generations of settlement by two other ariki whose tribes had subsequently been conquered and driven out.

Most of the larger and more fertile tapere were also the seats of particular ariki, and were on the whole much more populous than the tapere of the mataiapo,[1] and within each of them an authority structure based on the creation of rangatira titles was built up under the ariki. In the case of Pa and Kainuku these authority structures were contained within the original valley, but in the case of the Makea people authority was acquired over the contiguous tapere as well and these were incorporated within the existing authority structure.[2]

The support of the three most powerful groups within the Avarua area was maintained by the high chief taking a high-ranking wife from each of them, and creating the eldest son from each wife as an ariki. This triple arikiship was,

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1 Apart from their much greater area and agricultural potential, the remains of large (but now abandoned) terraced taro patches in these valleys suggest that they did carry larger populations.

2 The Avatiu valley was left in the hands of the Uritaua, an immigrant group whose leaders were made rangatira under Makea. Control was acquired over the Ngatipa tapere when its chief, unable to control internal dissension in his lineage, handed over his authority to the Makeas. How they acquired control of the area between Avatiu and the boundary of Arorangi is not known, though this is the poorest land on the island and it is doubtful if it ever supported much population. The district of Tupapa did not join the Makea party until just after the arrival of the first Tahitian missionaries.

theoretically at least, an unstable compromise which could hardly have been expected to last, and within a generation one of the titles was in eclipse. By the next generation thereafter, however, the mission arrived and the existing situation was crystallized and has remained with little change since.

Arorangi: the tribe that broke away

There is only one ariki title in this district, namely that of Tinomana. While of the same rank as other ariki, the Tinomana title seems never to have achieved the eminence of either Pa or Makea. Tinomana is stated by some authorities to be descended from Tangiia, but from a marriage prior to that with Karika's daughter, and by others to be a direct descendant in the male line from Karika.[1] The Tinomanas themselves follow the first alternative, tracing through Motoro, a son of Tangiia, who was not born in Rarotonga, but came to the island as a young man. A close link with the Makeas is, however, postulated by the fact that at least some holders of the Tinomana title were officially elevated to office and also buried in Avarua.[2]

All sources agree that Rongooe, the progenitor of this line in Arorangi, was banished in the fifteenth century for his despotism, and fled to the western part of the island (which appears to have been considered a haven for refugees) where he later became accepted as ariki. Though the process by which he achieved ascendancy is not known, we do know

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1 In view of the intermarriage between the chiefly lines it is quite possible that he was in fact a direct descendant of both founding ancestors. Alternatively, the truth may lie in the explanation of one authority to the effect that Rongooe (the first holder of the Tinomana title to break away) was a son of Makea te Ratu, but that between the time of his conception and his birth his mother lived with the then holder of the Tinomana title. - Te Aia, JPS 2:276.

2 Terei, Tuatua Taito, part 8.

that by the time of arrival of the first Europeans (and in all probability for many generations before) a contiguous group of nine tapere on the western side of the island were affiliated under the arikiship of the Tinomanas - the descendants of Rongooe. Jointly they constituted the district of Puaikura but as this district is known today as Arorangi, it will be referred to throughout by this latter name.

In 1823 Arorangi had the smallest land area of the three districts, and its population is said to have been reduced from a former higher level, due to a series of defeats in battle after which the survivors had lived for a considerable period in the mountain area to avoid complete extermination.[1] These considerations help to explain the relative lack of traditional history of this tribe.

Relations between the tribes

After the defeat of the invaders from Tahiti by Tangiia and Karika, there followed ten generations of relative peace.[2] In the tenth generation the notorious chief Rongooe (who founded the Arorangi district) arose and 'commenced the killing of men...and likewise the eating of them; then began evils and troubles in the land'.[3] Spasmodic warfare continued thereafter until the arrival of the mission some thirteen generations later. The ten generations of relative peace no doubt resulted in considerable population expansion, and it may well have been that the consequent pressure on the

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1 They were still living in the mountains when the first missionaries arrived.

2 The traditions claim that Tangiia 'outlawed' war - e.g. Toarua, JPS 20:140. It may be claimed that the description of this period as one of peace merely reflects ignorance of what actually did go on, but as wars are recorded both before and after, it seems reasonable to assume that no major conflict took place during the period.

3 Te Aia, JPS 2:275.

island's resources was a factor in initiating and perpetuating the later conflicts.

The more important wars are recorded in the traditional histories, and though accounts of the less spectacular battles have never been assembled together, the fact of their occurrence is confirmed by many individual family histories, and by evidence given in the Land Court. Mission and mission-influenced reports, however, tend to over-emphasize the extent of warfare and the related evils of 'heathen darkness'.

Missionaries and other early European writers often convey the impression (in their published works at least) of an island permanently divided into hostile tribes whose only contact was in war.[1] This view has become widely accepted by later Europeans, including some Land Court judges, and it is accordingly necessary to determine as far as possible the nature and occasions of inter-tribal contact.

Indications of some degree of movement are suggested firstly by the existence of a well maintained inland road which ran right round the island about half a mile from the coast. Secondly, many accounts refer to members of various tribes, and even the whole island, assembling for the offering of first fruits and certain other ceremonial activites.[2] Thirdly, it was customary for ariki to participate in the installations of ariki of other districts.[3]

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1 E.g. '...so general and constant were the enmity and jealousy of one tribe toward another, that the majority of the people were confined to the range of district where they were born, only hearing vague reports, but knowing little definitely, respecting the tribes beyond them.' - Gill, Gems... 12.

2 E.g. Taraare, JPS 30:140; Maretu, MS 21.

3 Details of the installation of Makea Pori Ariki by Kainuku Ariki and Pa Ariki are given by Maretu.- MS 29. Terei describes the installation of Tinomana in the district of the Makeas. He notes in another connection that once installed to office an ariki was sometimes carried right round the island.- Terei, Tuatua Taito, 46 and 31.

Fourthly, there was intermarriage between districts, with concomitant obligations and subsequent blood ties linking the families concerned.[1] Whether as a result of inter-district marriages or not, there were pre-contact examples of persons living in one district and having land rights in another.[2] Fifthly, there is an indigenous term 'ui ariki', which, while commonly used today as a simple plural of ariki, strictly means 'the assembled ariki' - i.e. as a functional group rather than as an agglomeration.[3] Finally, one finds in the writings of indigenous authors such comments as the following: 'The island then lived in peace...and the people moved freely between all the districts.'[4] Admittedly this passage is sandwiched between others which describe sanguinary battles, but the picture drawn is one of considerable intervals of peace during which relatively free movement was possible and usual.

Warfare, which was not uncommon, would be the major factor inhibiting freedom of movement. Another danger

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1 E.g. the visit of an Avarua rangatira to his brother-in-law in Arorangi is described in detail in PSI 76; Maretu describes Makea as withdrawing from a successful attack on Arorangi when he saw a close relative among the Arorangi party. - Maretu, MS. For the birth of a high-ranking child 'all the principal people in the whole land bring cloth, not this district only, but the whole land...'. - Pitman, Journal 9.11.1829. Instances of banished persons seeking asylum with relatives in other districts are legion.

2 Maretu refers to the land of the Makeas on the south side of the island - MS 162; Buzacott refers to claims by several Avarua people to land in the Takitumu district - Buzacott to LMS 'early 1830' SSL. The mataiapo of Rangiatea (part of Takitumu) claimed a piece of land at Nikao (in the Avarua district) on the basis of pre-contact incidents - MB 22:343 NLC. These are admittedly atypical cases, and the number of them was relatively few.

3 The significance of this term as an index of interaction between tribes was first pointed out to me by Judge Morgan. Its relevance is supported by the fact that at Arai-te-Tonga, the chiefly court of the Makeas, elders can still identify the named seating stones, each of which was specifically set aside for one or other of the ariki of the other tribes on the island.

4 Terei, Tuatua Taito 37.

against which precaution was probably necessary was that of being attacked in retaliation for a grievance against a relative. A system of tattoo marks acted as a reminder of vengeance to be exacted, not necessarily on the offender himself, but equally satisfactorily on one of his issue or other relatives. This no doubt added an element of risk to travelling alone and probably accounts for the fact that most inter-tribal visits recorded involve groups of people in the company of a chief.

Chapter 3

SOCIAL ORGANIZATION

The system of social organization which developed over the centuries on Rarotonga was based on a pattern that was brought from Eastern Polynesia but was modified in the course of time in response to local environmental and demographic circumstances.[1] The following description summarizes the elements of the social system as it was at the time of first European contact, but does not attempt to trace the process by which the system evolved from its Tahitian prototype.[2]

The tribe (vaka)

While larger units were at times formed for warfare and other ad hoc purposes, and there were some ceremonial occasions on which all the people of the island assembled together, the tribe was the largest social group coming under long-term unitary leadership.[3] In conception it was composed of all those who traced their descent from persons who had travelled to the island on the same canoe.[4] The rigidity of interpretation of the term vaka as a social unit was modified over time, such that a group absorbed into a

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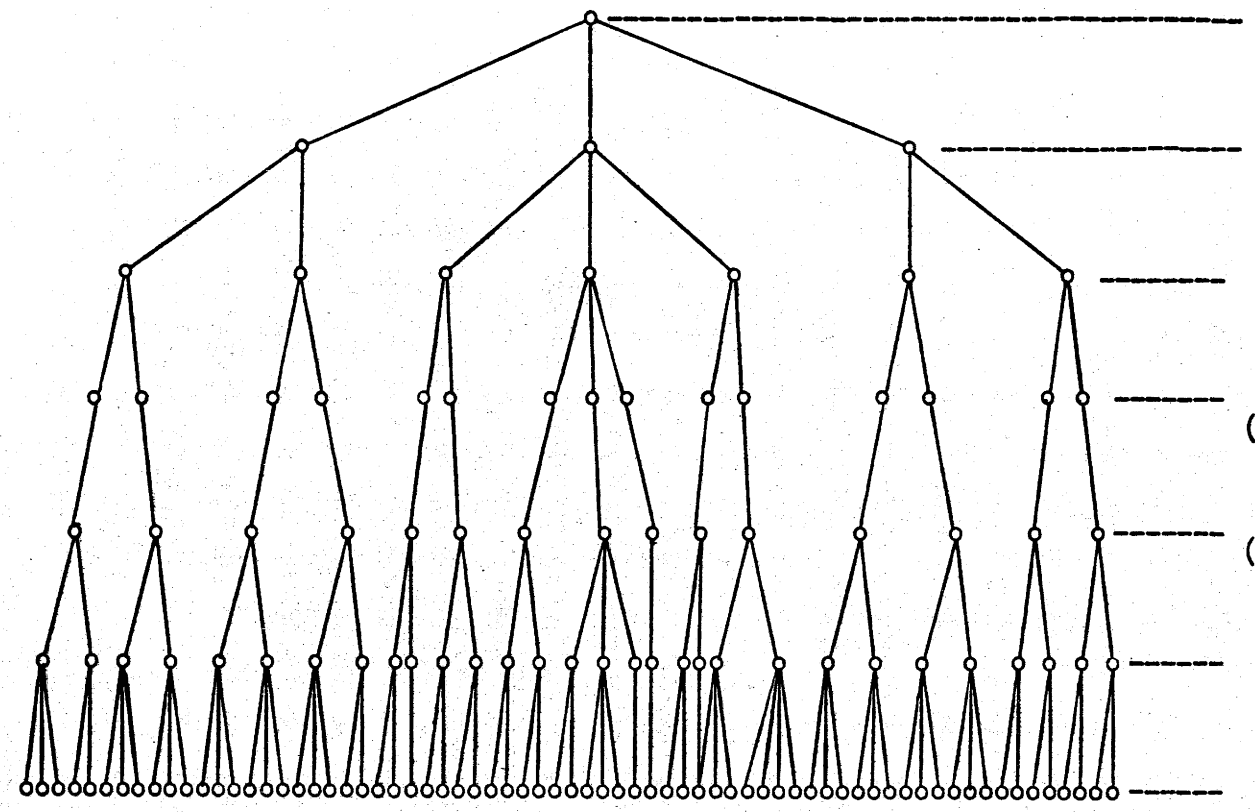
1 A schematic representation of certain elements of the indigenous social structure is given in the diagram on page 32.

2 While current archaeological and ethnohistorical research such as that of Green and Oliver and others is throwing more light on the form of this prototype, its exact nature is still being studied.

3 Gilson argues that these units were sub-tribes rather than tribes and that the whole island constituted a single tribe. However, as the three sections functioned generally as separate units, it has been found more convenient to refer to them as tribes. - 'Administration...' 19.

4 The term 'vaka' means canoe as well as tribe.



Name of Head	Descent Group Subsumed	Local Group Subsumed
Ariki (High chief)	Vaka (Tribe)	Vaka
Mataiapo (Chief of major lineage)	Ngati (Major lineage)	Matakeinanga
Rangatira, Komono (Chief of minor lineage)	Ngati (Minor lineage)	?
Kiato (Head of a branch of a large minor lineage)	-	Kiato (Branch of a large minor lineage)
Metua (Head of household)	Uanga (Extended family)	Kainga tangata (Household)
Unga (Commoner)	Puna (Nuclear family)	Puna
Vaine e te tamariki (Women and children)	-	-

IDEAL STRUCTURE OF A RAROTONGAN TRIBE

Note: 1. The head of each group was also the head of one of each of the groups below him, e.g. the ariki was head of his own nuclear family, of his own household, of his own major and minor lineages, as well as being leader of the tribe as a whole.

2. Specialists (e.g. priests, tattoo experts, fishing masters) occurred at the levels of chief of major and minor lineages.

tribe became referred to as part of the vaka. For instance, though Kainuku Ariki traces his descent from people who lived on the island in the pre-Tangiia period, he and his followers allied themselves with the Tangiia people and became figuratively a part of the vaka of Takitumu. Again, while Arorangi originated as a segment which broke away from the other tribes, it is nevertheless referred to as a vaka (under its ancient name of Puaikura). The people of Avatiu, a segment of Avarua, migrated to the island about 1600 A.D., and while they are generally accepted on formal occasions as forming part of the vaka of Makea, they at times assert their independence on the grounds that, having come by a separate canoe, they constitute a separate vaka of people.[1]

Titular headship of the tribe was vested in the ariki who, due to their descent from the gods and their supernatural powers, were treated with great veneration.[2] Ariki were descended from founding ancestors, ideally in the direct male line, though the extent to which this ideal was achieved can only be a matter of conjecture, for while the recorded genealogies usually show descent as being from father to son this was not always in fact the case. The number of titles of the ariki class seems to have fluctuated from time to time. For example, until Makea Te Pa Atua Kino conferred the title of ariki on the eldest son of each of his three wives, there was only one ariki title in the Makea line. However, within two generations of his doing this, one of the titles (that of Vakatini) was sufficiently inactive to go unnoticed by Williams, Buzacott, Gill and other early

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1 E.g. Patu Tita in evidence. - MB 19:167 NLC.

2 Gill noted that a commoner would not look Makea in the face 'lest the regal glance should devour[him]'. - AAAS 629. Heirs to the ariki title invariably had several wet nurses. - Williams, A Narrative... 515. The sacred nature of the head of an ariki is indicated in Terei, Tuatua Taito 46-7.

writers who lived in that very district in close contact with the chiefs; and Maretu, himself a Rarotongan, does not include Vakatini in his list of recognized ariki on the island at the time of the introduction of the gospel.[1] Terei speaks of a time when there were seven ariki in Avarua alone, and of another period when there were none.[2] Again there are instances of titles which were once rated as ariki, but are now regarded as mataiapo.[3] Maretu claims that only ariki could make wars but there is ample evidence to show that intra-tribal skirmishes took place in which the ariki was not involved, and though ariki were involved in wars between tribes, none of the records speak of them engaging in actual combat.[4]

The vaka was both a social and a territorial unit. In the latter sense it referred to the area inhabited by the tribe, and for this use of the term we have chosen to use the word 'district' (of which there were consequently three). Matters of interest to the whole tribe were discussed on the tribal koutu,[5] but little knowledge remains of the matters dealt with at these meetings. Within each koutu there were one or two marae, where tribal ceremonies of a religious nature took place and where the ceremonial installation of an ariki was performed. War parties were sometimes organized on a tribal basis, but it appears to have been more common for them to have been arranged by some rather than all of

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1 Since that time, however, this title has again regained ariki status.

2 Terei, Tuatua Taito 28-9. Numa also refers to seven ariki at a time prior to the division of the Makea title. - MS 14.

3 E.g. Tamaariki and Kaena. - MB 1:114 and 199 NLC.

4 Maretu, JPS 20:201. It is possible that war (tamaki), in the sense in which Maretu is using the term, refers only to inter-tribal conflict.

5 The 'royal court' of a reigning ariki. For a fuller description see page 62.

the lineages within a district. There is little evidence to indicate the nature of judicial processes operating at the tribal level.[1]

The major lineage (ngati)

It was noted earlier that the island was divided into sub-districts called tapere, and that each was allotted to a particular mataiapo (or ariki). The tapere often took its name from the founding mataiapo or from an incident with which he was associated.[2] The occupants of a tapere were known collectively as the matakeinanga. This term included all residents, whether their connection was agnatic, affinal or otherwise. The local descent group (i.e. the matakeinanga less affines and those whose membership was not based on descent) was known as the ngati. It consisted of all those people who, in addition to being co-resident, reckoned their descent from the founding mataiapo, whether or not they could actually trace that descent.[3] While descent could be traced either patrilineally or matrilineally the former was the more usual.[4] The most common determining

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1 Maretu quotes an instance shortly after the arrival of the first Tahitian missionary, but before conversion to Christianity had been effected, wherein the ariki ordered an offender to pay an idol and a pig as compensation to an injured party. - MS 81. This is the only pre-Christian reference of this sort noted.

2 E.g. Ngati Vaikai or Ngati Maoate - the second word in each case being the name of the founding mataiapo. The tapere of Tikioki exemplifies the naming of a tapere after an incident with which the founding ancestor was linked. Legend states that Tangiia sent Terei to Tahiti to fetch (tiki) Tangiia's son Motoro and return (oki) with him to Rarotonga. Terei successfully carried out the mission and was awarded this tapere which was named Tikioki with reference to the incident.

3 In practice anybody whose claim was derived from a person who was an accepted member of the ngati.

4 Among the many chiefly genealogies examined, instances of tracing through a female were found to be quite rare; but this rarity was perhaps exaggerated by the tendency to rationalize towards the ideal, and to the fact that when a man acquired his title through his mother, the remembered genealogical link would be from the man to his maternal grandfather, omitting the mother altogether.

factor, however, was that of residence - children of virilocal marriages generally tracing patrilineally and those of uxorilocal marriages tracing matrilineally. In the latter event, however, one traced through the mother to her father and his (predominantly patrilineal) line of descent. While pre-contact instances of tracing through the mother are not uncommon, no pre-contact cases have been noted wherein descent was traced through females for two consecutive generations; though it did perhaps occur on rare occasions. Such post-contact instances of two successive matrifiliations as have been noted have invariably been associated with special circumstances.[1]

The lineage (as distinct from the tapere) was invariably known by the name of the founding ancestor, prefixed by the word ngati. For instance, a lineage which traced its descent from an ancestor named Ru would be called Ngati Ru, irrespective of the name of the tapere, but as the name of the founding mataiapo became a heritable title name, some tapere (e.g. Ngati Vaikai) have the same name as the occupying lineage.

The descent group occupying the tapere will be referred to as the major lineage, as most major lineages became subdivided in the course of time into several minor lineages. In the Takitumu and Arorangi districts the leadership of the major lineage lay with the mataiapo, whose virtual independence of the ariki in matters relating to land was based on the traditional charter by which the lands of the island were allotted to each mataiapo. In Avarua, on the other hand, headship of three of the six major lineages lay with the three ariki, and of the others, one was headed by the

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[1] This refers to post-contact instances prior to the establishment of the Land Court in 1902.

high priest Takaia,[1] one was the immigrant group living in the Avatiu valley who had their own head, whose status in the Makea hierarchy was that of rangatira, and the last was a collection of the once-powerful Ngaaio people who had been subjugated by the Makeas.

Each mataiapo, as head of the major lineage, had a marae which was the focal point of the religious activity of the lineage. While some heads of minor lineages also had marae, this was not usual, and religious activity seems to have been centred at the major lineage level.[2] The marae of the mataiapo was used for the installation of the title-holder, but beyond this little information is available.

While a person was said to 'belong' to the lineages of his two parents and also to those of his grandparents, clear distinctions were drawn between his rights and obligations in respect of each of these lineages.[3] While the Rarotongans did not distinguish terminologically between these categories, it is necessary for the purposes of analysis to identify each of them separately.

A child's primary lineage affiliation was usually determined at birth and was confirmed at its naming. If the child was named by its father or by members of his lineage, then it became a member of that lineage, and the person bestowing the name was obliged to supply clothes for the child, and special foods for the mother for some days after parturition. A permanent relationship was set up

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1 Takaia, being high priest, faded into oblivion after the establishment of the mission.

2 Tangi-taura, a rangatira under Vakapora Mataiapo, had his own marae, and it may have been significant that Tangi-taura considered himself as virtually independent of Vakapora's authority. - Vakapora, JPS 20:215-8.

3 The structural picture presented here derives from field-work data. It is, however, consistent with the principles which emerge from historical sources.

between the child and the person who bestowed its name. While most of the children joined the lineage of that parent in whose lineage they resided (usually the father's), it was normal for the family of the other parent to name and provide for at least one of them.[1]

Primary membership of a lineage could also be acquired by adoption, which was a common method of reinforcing links between individuals and between their respective lineages. The predominant direction of adoption was from a female who had married out, back to her father or brother in her natal lineage. Adoptees were thus almost invariably chosen from secondary members of the adopting lineage (as defined below). If, however, an unrelated person was adopted, he was formally regarded as a member of the lineage, though this membership was marginal and its retention dependent on continued acceptance by the group.

While the major lineage was predominantly a residential unit living within the tapere, it also included for certain purposes all those persons who had been born into the lineage but had subsequently married out or left the tapere, provided they had not been banished or otherwise severed their social connections with their natal lineage. Maintenance of these connections required attendance at lineage gatherings and appropriate contributions to lineage feasts. A wife usually resided with her husband's lineage, but did not become a primary member of it. Persons who were born into a lineage but who subsequently left it at marriage, or adoption, or

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[1] Gill states that it was done by reference to the gods, for as the different lineages owed allegiance to different gods, the god of the father was different from the god of the mother and affiliation was formally settled by dedicating the child to the lineage god of one or other parent. He goes on to say that the mother usually gave up one child at least to her own tribe, the rest going to the father's. - AAAS 323-4 and 331. This custom is still quite commonly observed today.

under other socially acceptable circumstances will be referred to as contingent members of their lineage of origin, since they did not exercise many of the rights of primary members during their absence and their resumption of primary rights was contingent upon a variety of factors, the most important of which were probably the concurrence of the head of the group and the resumption of residence within it.

Children of contingent members will be referred to as secondary members of the lineage of that parent. To a lesser degree the children of secondary members of a lineage were themselves secondary members, and their connection was recognized for certain purposes. They will be referred to as distant secondary members. There was no definite period of time, or number of generations, which had to elapse before one was no longer eligible for membership of a lineage, though the possibility of gaining entry was clearly reduced by the passage of time. However, other factors were probably even more important, and lineages which needed extra fighting men were presumably content to recognize the most tenuous link with a potential member, whereas those with inadequate land to support their present numbers would not be anxious to admit even close relatives.

While an individual was a primary member of only one ngati as of right he was a potential member of all other lineages from which he could trace descent, either matrilineally or patrilineally.[1] All members of all such lineages to which one could trace a cognatic relationship were known

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[1] It is appreciated that some writers have raised objections to the use of the term 'lineage' in Polynesia due to the fact that Polynesian descent is not necessarily traced unilineally, and Firth suggests the term 'ramage' instead. - Man 57:4-8. As the latter term does not yet appear to have achieved wide currency, the former will be adhered to in this study, for while Rarotongan descent groups were often in fact ambilineal, they were supported by a patrilineal ideology and a strong patrilineal bias.

as kopu tangata (kindred).[1] The kindred, which was the widest of all social groups, cut across tribal boundaries and shelter, or food could, ideally at least, be required of any member of the kindred.

Persons whose residence with a lineage was not based on descent or adoption (i.e. those whose membership was due to marriage, to the seeking of refuge or otherwise) will be referred to as permissive members of that lineage. To sum up then, membership of the ngati was based on descent and residence. Primary, contingent and secondary members belonged by the first criterion; primary and permissive members belonged by the second. It was those whose link was by both descent and residence (i.e. the primary members) who constituted the core of the ngati, or what might be called the ngati proper.

The minor lineage (ngati)

Most major lineages were subdivided into a number of minor lineages (also called ngati), the members of which also traced their descent from a common eponymous ancestor. Like the major lineage of which it was a part, the minor lineage was a predominantly patrilineal descent group. Subdivision generally occurred through the elevation of a real or classificatory younger brother of the titleholder to a position as head of a sub-unit within the major lineage. Often the person chosen was a potential rival for the senior position, whose ambitions were held in check by being given a position of responsibility at a lower level.

There were two categories of minor lineage head (in addition to which the ariki and mataiapo each headed his own minor lineage). The first was the komono or deputy of

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[1] The term 'kopu tangata' is also used with other connotations which are not of immediate relevance in this context.

a mataiapo.[1] The second was the rangatira which was the most common title on the island and therefore the most common title found among minor lineage heads. Those major lineages which were headed by ariki had significantly more rangatira than did those headed by mataiapo. Some of the larger minor lineages (mainly those in the tapere of ariki) were again subdivided into segments known as kiato, and the head of such a segment was also referred to as a kiato. While kiato were generally junior relatives of the rangatira or other chief to whom they were subordinate, immigrant groups were sometimes also taken in and given the status of kiato.[2]

The core of the minor lineage or kiato was basically a residential unit living in a group of neighbouring hamlets,[3] with contingent and secondary members residing elsewhere. It was at the level of the minor lineage that the life crises of the component members were high-lighted. Births and deaths, and the marriages of persons of rank necessitated the organization of entertainment, the transfer of gifts and the provision of feasts, and while the minor lineage was the usual level at which these activities were organized, on occasions when the person concerned was a mataiapo or ariki, then the responsibility lay with the major lineage or tribe concerned. In this event the term ngati was used with a somewhat different connotation and was prefixed to the name of the titleholder (e.g. Ngati Pa) and used to designate all those people whose lineage heads recognized

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1 As there were no mataiapo in Avarua this title was not encountered in that district.

2 Savage, 'Dictionary...'.

3 This is an assumption based on the views of informants, for no detailed descriptions of these hamlets are available, though passing references are made to them. They were superseded immediately after first contact by the mission villages near the coast.

that titleholder as superior to them in the same hierarchy of authority.

The extended family (uanga)

The extended family was a component part of the minor lineage and was based on the same structural principles. It was a group of persons who traced their descent from a common progenitor, sometimes still living, but often deceased a generation or more ago. This progenitor was referred to as the metua (elder) and all those persons descended from him were known as 'te uanga o mea' - 'the descendants of so-and-so' (the elder concerned). The core of the uanga was the basic residential unit - the household (kainga tangata). Each household usually contained three or even four generations of people, and it was here that the primary and permissive members of the uanga lived. Leadership of the household and of the uanga it represented lay with its elder (also known as metua) who was ideally the senior (but not necessarily the eldest) resident male. Each ariki, mataiapo, komono and rangatira was metua to his own household.

The nuclear family (puna) and the young unmarrieds (mapu)

The puna consisted of a man, his wife and his children plus and minus adoptees. If a man had more than one wife, the family established by each constituted a separate puna. Each puna then was headed by an adult male (though a polygamous man would be the head of more than one puna). Each household probably comprised several puna and a few young single adults (mapu). The puna appears to have been of little importance economically, its main function being that of a procreating unit.

The commoner (unga or tangata rikiriki)

The young unmarried men, the untitled married men, and even many untitled heads of households were known as unga.

There has been some controversy regarding the origin of this word and regarding the best English equivalent with which it may be translated. The words 'slave' and 'serf' have frequently been used but these do not seem appropriate. Perhaps the best definition is that given by Gill which concerns an analogy with the indigenous arrowroot (tacca pinnatifida), which has one or two large tuberous roots surrounded by many smaller ones. 'To the highly imaginative native mind,' says Dr Gill, 'the large tubers symbolize the chief or chiefs; the smaller ones the landed proprietors owing allegiance to, and by blood related to, the chief or chiefs. But besides these, there are a great number of tiny tubers called unga, representing the serfs, or "little people" (tangata rikiriki) as they are often called i.e. people of no account whatever!' He goes on to note that derivatives of the word unga are used to describe such things as grains of earth and crumbs of food, and that the underlying idea is that of 'an insignificant grain or unit'.[1] The word also refers to the hermit crab and it is not uncommon for informants today to interpret it (when used for people) as deriving from the fact that the commoner, like the hermit crab, lived in the shelter of somebody else's house. However, Gill claimed over a hundred years ago that this was a modern corruption.[2]

The social and economic status of the commoner is of some importance, and became a major issue when the Land Court was established and it became necessary to specify the relative rights of commoners and titleholders. Most

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1 Gill, JPS 20:128.

2 Ibid. While vernacular references to unga are generally in respect of ordinary untitled men (e.g. Terei, Tuatua Taito 37) there are some instances in later sources where the word was used to denote under-privileged commoners (e.g. by Pa Ariki, NZPP A3(b) 1903:9), and it is possible that the meaning of the word was modified to some extent as a corollary of the rise in chiefly power in the nineteenth century.

early observers tried to pigeonhole the unga into one of the categories known to them from the feudal system. Wyatt Gill referred to them as slaves but said that they enjoyed 'the protection of the land owner'.[1] William Gill spoke of them as 'the mass of common people who...under the above three ranks [ariki, mataiapo and rangatira], were in the condition of serfs'.[2] Moss said that they held their land 'by sufferance' and that the services rendered by them were 'personal and menial'.[3] Their origin, he said, was 'obscure'. But as Moss' analysis showed that all men in the society were either titleholders or unga, there appears to be no reason to consider their origin obscure, nor is there any evidence to suggest that they were other than the ordinary untitled members of the family whose origin was the same as that of the chiefs, except that the latter derived from generations of elder sons.

Reference is sometimes made in the literature to 'slaves' (tuika'a). The term seems to have some validity, though only in a relative sense. Tuika'a were either prisoners taken in war who were kept as retainers by the victors, or under-privileged refugees given asylum. They became part of the household, and should be regarded as under-privileged commoners rather than as slaves in a Western sense. If conditions were too onerous they always had the alternative of running away to serve some other chief. The name tuika'a literally means 'sewn with sennit' and refers to the custom of marking pigs by tying sennit through their nostrils. Some authorities consider that persons so

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1 Gill, JPS 20:129. By 'land owner' he appears to mean the holder of the relevant title.

2 Gill, Gems... 12.

3 Moss, JPS 3:24.

classified were 'but pigs reserved for the day of feasting',[1] but it is most unlikely that people who were clearly stated as being allowed to cultivate lands allotted them by their chief would passively wait around to be roasted at his convenience. Generally speaking, few 'slaves' were kept. Males were too dangerous for they would always be on the look-out for methods of retaliation, and females in the normal course of events became wives of the more privileged members of the household.

Demographic composition

Some indication of the demographic composition of the various social groups at the time of first contact can be deduced from details of the numbers of tapere, titles and lineages, as well as from population counts by early missionaries. The total population, which was estimated by the first observers at between six and seven thousand,[2] was divided between three tribes. In proportion to their numbers at the first tribal counts in 1840,[3] the populations at 1823 would have been approximately 3,400 in Takitumu, 1,600 in Arorangi and 1,500 in Avarua. While ideally there was only one ariki to each tribe, there were in fact two separate titles in Takitumu, and though there had been only one title in Avarua it had been divided into three branches.

There were some twenty-eight tapere in Takitumu and nine in Arorangi giving an average of 135 persons in each

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1 Gill, Life in the Southern Isles 34.

2 E.g. Williams, A Narrative... 19. Working from a basis of food requirements in relation to given resources and technology, a recent student of Polynesian populations considers that the island could not at that time have supported more than 7,400 people. - Lay, 'A Study of Certain Aspects of Human Ecology in the Polynesian High Islands during the Pre-contact Period' 167.

3 But making allowance for the transfer of the Tupapa sub-district from Takitumu to Avarua just after contact.

major lineage.[1] While ideally (and in the majority of cases in fact) there was only one mataiapo in each tapere, the occupying lineage had in some cases split, and in the extreme case of Tupapa tapere there were seven mataiapo. The number of mataiapo at the time of first contact is not known exactly, but during the nineteenth century some komono and rangatira became elevated to that rank and by the turn of the twentieth century there were forty-two mataiapo in Takitumu and twenty in Arorangi, or an average of nearly two in each tapere.[2] In cases where such a division had occurred, the lands were divided also and the portion assigned to each mataiapo was for all practical purposes a separate tapere even though it was nominally still one.[3] The average major lineage in Avarua was somewhat larger, but this is to be expected as there were three ariki lineages and the number of rangatira (indicating the number of minor lineages) was considerably greater than in the other districts. Moreover, probably due to their larger size, many of the minor lineages in Avarua were subdivided into kiato while this was not common in the other districts except in the tapere of ariki.

The only available indication of household size is that when the first European missionaries divided the people of

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1 In Mangaia an accurate census was taken in 1846 and showed an average of 89 persons per lineage, though the population had already been reduced by disease from its pre-contact size. In 1854, after a further drop in numbers, an accurate count was made of each lineage. The average number of persons was then 71 per lineage with a range from 14 in the smallest to 214 in the largest - No te au Enua i aere ei te Pai Orometua 1846 65; and 'Census of the population of Mangaia 1854'.

2 There were several conquered tapere (like Vaimaanga which was divided among the six major lineages responsible for its conquest) which had no separate mataiapo of their own.

3 In some instances (probably those where the division had been an amicable one) the seniority of the original mataiapo continued to be recognized, and that title was referred to as mataiapo tutara (senior or paramount mataiapo). In such cases the subordinate lineages were more like minor lineages than major ones.

the island into 'classes' in 1827 they formed twenty-three classes, each of which comprised from twenty-five to twenty-eight households.[1] Excluding the anti-Christian party this leaves an average of about nine persons per household, or about fifteen households in each major lineage. While some mataiapo had but one komono or rangatira below them, others had several and some ariki had over a dozen. Assuming the average to have been about three (which appears consistent with such information as is available) then the average minor lineage head would have been responsible for about five households.[2]

Specialists

Ritual specialization appears generally to have occurred at the level of the lineage head, and one authority claims that each major lineage head was a specialist of one type or another.[3] The generic name for a specialist was ta'unga, which refers to the capacity to invoke the assistance of supernatural agencies, and all specialists were believed to be possessed of such powers, though in varying degrees.[4] The most important class of specialists was that of the high priests, of whom there were six - two belonging to the Avarua tribe, and four to Takitumu.[5] In addition to these

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1 Prout, Memoirs of the Life of the Rev. John Williams 248.

2 No attempt was made to compile a full list of rangatira titles in existence at the time of first contact, and accurate estimates of the demographic composition of the smaller groups must await archaeological research.

3 Numa, MS 7.

4 Savage defines ta'unga as: 'A name applied to any person who was appointed to, or held the office of a priest, or any person who was skilled in any special art.' - 'Dictionary...'. Gill notes that 'artisans were priests' and goes on to say 'That the Rev. John Williams should be able to fell a tree and build a vessel as well as preach and teach was in perfect harmony with their traditional ideas of a priest-chief'. - Jottings from the Pacific 224.

5 There were originally one in Karika's party and five in Tangiia's, but one of them later transferred his allegiance. See page 20.

there were many lesser priests, though just how many we do not know,[1] for early mission efforts were directed towards the extermination of the priestly class - preferably, though not necessarily, by conversion. Their efforts were so successful that little knowledge of the role of priests remains.[2] Other specialists included orators, fishing experts, carpenters, tattoo experts, and net makers.[3]

Marriage

While the lower social strata generally sought their wives within the district, those of higher rank (especially the ariki) often sought theirs from other districts.[4] The degree of consaguinity within which marriage was prohibited is not known for certain; though there was much marriage of 'near blood relations'.[5] Gill states that exogamy was the rule, but that if a 'tribe' split, each portion was regarded as an independent unit and marriages between the two sectors were permissible, even for close kin.[6] Within the 'tribe' (which term he does not define) distant cousins could marry 'but must be of the same generation i.e. be descended in the same degree (fourth or fifth or even more remotely)

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1 Of their existence there is ample evidence in random references in the indigenous literature - e.g. Terei, Tuatua Taito 51. Even the early mission literature refers to them from time to time - e.g. Buzacott, Mission Life in the Islands of the Pacific 41.

2 As Judge Morgan has said 'The Gospel and the principal chiefs survived so it is not difficult to imagine what might have happened to an antagonistic priestly class'. - Taputapuatea rehearing, NLC.

3 Buck, Arts and Crafts... 129, 206, 211, 245 and 499.

4 Of inter-district marriages between chiefs there is ample documentary evidence, but of the marriage of commoners only the evidence of present-day informants is available.

5 Moss, JPS 3:20.

6 Gill, AAAS 330.

from the common ancestor'.[1] The ideal marriage was between persons whose parents were of the same rank, e.g. for the son of a mataiapo to marry the daughter of another mataiapo, but as such arrangements were often not possible, a multitude of other factors must have entered into the selection of marriage partners in many instances.

Polygyny was practised, though most sources consider it to have been the prerogative of the chiefs.[2] Additional wives were often sisters of the first wife.[3] Mission reports often exaggerated the extent of polygyny. Pitman speaks of Makea having had eight wives and Kainuku seventeen[4] and Gill states that chiefs 'were wont to have from three to ten wives each'.[5] The available evidence suggests that two or three was the more usual figure, and in the source material the largest number of wives noted as living concurrently with any one man was six.[6] In any case, on a small island where such a high proportion of men were chiefs, and where such infanticide as was practised was confined in the main to female children,[7] there would simply not have been enough women to allow a high incidence of polygamy unless a large proportion of men remained bachelors until late in life.

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1 Ibid. No pre-contact genealogical evidence to indicate the relationship between spouses has been located.

2 Indigenous writers do not specify any principle, but all polyginous marriages they refer to are those of chiefs. Foreign observers who refer to the plurality of wives do not indicate whether or not commoners were entitled to this privilege.

3 Among the many instances recorded in native accounts in which chiefs married sisters are two mentioned by Terei - Tuatua Taito 9 and 24.

4 Pitman, Journal 29.6.1827.

5 Gill, Gems... 12.

6 The wives of Kainuku Tamoko Ariki.

7 Gill, Gems... 13.

There is clear evidence to indicate that this was not the case. It is possible, however, that the mission exaggeration was unintentional, for like French, the Rarotongan language makes no clear distinction between wife and woman and in view of the considerable degree of premarital license permitted the reply to a question asking how many wives a man had had could have been very misleading.

Child betrothals were arranged between chiefly families, but the extent of this custom is not known. Mrs Buzacott tells us that some of the chiefs wanted 'to marry Karika's son who is perhaps about ten years old, to a daughter of Makea who is perhaps about six years of age. It is perfectly consistent with their former customs for the parents to agree for their children in their infancy and childhood...' This 'marriage' was contracted and a feast was prepared as a confirmation of the arrangement.[1] When the parties united by such marriages reached adulthood they were not always satisfied with the match their parents had made and disputes on this account were common. Even in the marriage of adults, the choice of spouse was a family and not an individual arrangement.[2]

The marriage of persons of rank was the occasion of ceremony and gift exchange on a large scale. The relatives of each party accumulated their gifts, which were then transferred to the family of the other party for distribution.[3]

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1 Mrs Buzacott, Journal 16.8.1830. Gill states that it was common among chiefly families. - AAAS 326.

2 Moss, JPS 3:20.

3 '...all the people took cloth to the newly married couple according to their custom, the people as a body to the chief's son and the relatives of the damsel to her father. After which the father of the young chief takes the portion of the cloth brought to his son and sends it to the father of the damsel - and he in return sends his portion to the chief.' - Pitman, Journal 9.11.1829.

Like all other arrangements of note, a marriage was the occasion of feasting. Further gifts (mainly cloth) were brought to mark the first pregnancy and the birth of the first child.[1]

While the preferred marriage was between persons of the same social class, none of the classes were endogamous and it was not uncommon for chiefs to marry commoners.[2] A family of low status could improve its position by giving a particularly attractive daughter in marriage to a powerful chief, and it was not uncommon for a chief to marry off his daughter into an inferior group in order to swell the ranks of his lineage.[3]

Transmission of titles

The ideal pattern of transmission of titles was from father to eldest son.[4] If the dying chief's eldest son was of such ability and maturity of years that he could adequately discharge the duties of his father's office no problem arose as to succession, but frequently the situation was not so straightforward.[5] The chief may have two eldest sons - one from each of his two wives, whose relative status may

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1 Ibid.

2 Gill, JPS 20:129. The existence of this custom is beyond doubt, but its incidence is impossible to ascertain as pre-contact genealogies generally omit wives other than the senior wife through whom the title passed.

3 Gill, AAAS 329-30.

4 The study of genealogies shows this to have been the dominant pattern but, owing to the fact that kinship terminology was classificatory and adoption was widespread, what is stated as being father to son may not infrequently have been uncle to nephew. In the more recent generations such distinctions are known, but in earlier generations they were not, indicating a process of assimilation to the ideal as time obliterates the details.

5 One authority claims that if the eldest son were unfitted to hold the title, then it was sometimes claimed that the appropriate god had taken up its abode in the youngest member of the family, and the title passed to him accordingly. - Gill, Life... 46. No actual cases of this have been noted, either in the pre-contact era or later.

not be clear-cut, for the 'seniority' of a wife may have to be manipulated in terms of the political position of her family, as much as in respect to her age or her place in the order of her husband's marriages. In the case of Makea Te Pa Atua Kino who elevated the eldest sons of each of his three wives to the rank of ariki, his motive appears to have been to maintain the support of contending factions, each of which would only be content with the title passing to a child of the wife who originated from that faction.

A chief might have no son at all, in which case a number of aspirants might put forward claims on a variety of bases. An adopted son may make a claim, and in such a case the status of the adoptee's born parents, as well as his blood relationship to the adopting father, would be important considerations. In at least one pre-contact instance the adoptee used the strength of his club to compensate for the weakness of his adoptive right relative to that of other claimants.[1]

The genealogy of Rongooe as recorded by Wyatt Gill shows that when Rongooe was banished to the other side of the island the title went to his younger brother.[2] Particular political and demographic circumstances doubtless led to claimants with even lesser qualifications successfully contending for high titles on some occasions.[3] Rivalry over

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1 Savage, 'Iro Nui Ma Oata' 59. The successful claimant in the example cited was both a child of an ariki family of another district and a close relative of his adopted father.

2 Gill, AAAS 628. It should be noted, however, that Terei gives a different account of this chapter of events - Tuatua Taito, part IV.

3 One genealogy of an ariki line recorded during the last century shows 24 generations prior to the time of European contact. In 22 of the cases the title is shown as passing from father to son, in one case to a younger brother, and in the remaining instance the title was split into two and each of two sons of the previous ariki was given ariki status. - Gill, AAAS 627-33. Later Land Court evidence, however, shows that at least one of the ariki in the above

succession to titles between classificatory siblings (tuakana-teina) is so recurrent in legend that it probably took a significant place in actual history as well. This rivalry is likewise apparent in recent history and current disputes - not between real siblings, for their relative seniority is clear-cut[1] - but between classificatory ones. The classic case is that of Tangiia himself who left Tahiti as a result of a protracted dispute over title and lands with his adopted brother Tutapu. They were sons respectively of a woman and her brother, but both were adopted by their senior uncle (the eldest brother of the above parents) who had no sons of his own. Tangiia's mother was older than Tutapu's father, and she was the eldest sibling to produce a son. Tutapu on the other hand was from a male sibling, albeit a younger one. We are not told which of them was adopted first, or what was the relative status of their other parents, but it is apparent that one was senior according to some criteria and the other according to other criteria.[2] Karika, the other founding ancestor, left Samoa in similar circumstances.[3]

The selection of the ariki in the Takitumu and Arorangi districts was a matter for their respective priests and mataiapo, while in Avarua it was the responsibility of the

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3 (continued from previous page)
line was an adopted child, and that the title was divided into three and not two. With such known errors in the more recent part of the genealogy, one can reasonably assume the possibility of other deviations from the norm in the earlier and lesser known portion of it. Even in post-contact genealogies instances are known where the socially accepted genealogy differs somewhat from the known biological facts.

1 Except where the elder is alleged to have been adopted out in which case his status relative to that of the next elder brother has sometimes been a matter for dispute.

2 The fullest account is given by Terei, Tuatua Taito part I.

3 Ta'unga, MS 3.

priests and the more important rangatira.[1] The high priest of the district carried out the investiture and in some instances had a considerable influence on the actual selection.[2] In the normal course of events, the eldest son of the late chief would inherit the title and the role of the lesser chiefs would be simply to confirm the appointment and perform the appropriate ceremonies. Whether the ariki had a standing right to participate in the election of ariki of other districts is not certain, though there is clear evidence that on some occasions at least they were influential in the selection.[3] While they normally participated in the ceremonial attendant on the investiture, this of itself does not indicate that they had had any right to determine the candidate selected.[4]

In 1895, following a dispute as to the succession to the Pa title (the encumbent having no born children) the Arikis Council spelt out the 'mode of election and of installation of Arikis according to the established Maori custom'.[5] In this they stated that it was the responsibility of the priests and the mataiapo to select the ariki, 'and such selection is to be made only from the nearest relations

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1 Those rangatira who were entitled to participate are listed in MB 12:295-6 NLC. Those with no direct blood connection to the ariki were excluded.

2 E.g. Numa, MS 13-14.

3 E.g. Maretu, MS 20-31.

4 Moss states categorically that ariki were selected by the other ariki on the island, but that the new appointee had to be chosen from the family of the deceased. Given the rule of primogeniture and the necessity to select from the family of the deceased, they could not normally have had much in the way of choice, though their confirmation may have been required. On the other hand, it is possible that Moss is confusing their right to participate in the ceremonial with a right to select. - Moss, JPS 3:24.

5 Minutes of Meeting of Arikis Council 5.11.1895. - Te Torea 9.11.1895.

of the Ariki deceased, and they are to declare the same publicly'. However, they then qualify this statement by adding that: 'Should any new ariki be chosen without the other arikis, priests, and mataiapos of all the districts being present at the meeting, it must be proven satisfactorily to them that the one chosen is a near relative of the deceased ariki. If it not be so proven the arikis, the priests, and the mataiapos from every part of Rarotonga shall meet together in one place, and it shall be for them to decide who will be the new ariki. It must be clearly shown that the new Ariki is the hereditary descendant in a direct line'.[1] The requirement that all chiefs of the island should meet seems to be a post-contact modification, and in fact appears to have been specifically designed to meet the wishes of the other districts whose chiefs, in this particular case, disagreed with the wish of the dying titleholder who wanted to transfer the title to an adopted son whose claim in terms of seniority and proximity by blood to the incumbent was not as strong as those of other contenders.

On the question of a dying titleholder designating a successor by will (reo iku), the Arikis Council said 'An ariki may wish to appoint a successor on his...deathbed. After the ariki's death these words shall be carefully considered, and if it is found that the party named as a successor is a proper heir, such words shall be confirmed, not otherwise'.[2] This statement of principle confirms what was apparent in practice - that a 'will' might be influential, but was far from necessarily binding.

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1 Ibid.

2 Ibid.

Titles were sometimes transferred to a new holder during the lifetime of the previous incumbent. When missionaries first called at Rarotonga in 1823 Makea Pori and Makea Karika II were the ariki of the Avarua district. The fathers of both of these men were still alive but had 'voluntarily devolved the regal authority and title upon their sons.... This, however, is no uncommon occurrence amongst chiefs, greater and lesser, of the Polynesian race'.[1] Williams makes reference to a custom whereby sons, on reaching manhood, would wrestle with their fathers for mastery of the family lands.[2]

Genealogical evidence indicates that lesser titleholders were selected by the same principles as the ariki, but informants today claim that their formal acceptance was a matter for the senior members of the subgroups below that title. This is supported by evidence given before the Native Land Court. Illegitimates (i.e. children born other than from socially recognized spouses) were not eligible to hold titles.[3]

Women were not eligible to hold any titles, though tradition tells of a woman who was once created an ariki. However, such was the wrath of the gods at seeing this

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1 Gill, AAAS 630. In the particular instance the elder chiefs could have relinquished their titles as a result of their defeat at the hands of the Ngatangiia chiefs, for the transfer took place between the time of their defeat and of the reinstatement of their power in Avarua.

2 A Narrative... 138. This is the only reference found to this custom which Williams calls 'kukumianga'. The word 'kukumianga' in modern Rarotongan means 'wrestling', but informants did not recognize the word in the connection which Williams mentions. Gill does, however, mention having often seen instances of aging parents handing over the family house to the son who was to succeed to headship of the family while they retired to a small hut nearby. Gill, Life... 46.

3 There are a few post-contact examples of such persons succeeding to titles, but invariably the child's right was acquired through the adopting parent and even then trouble resulted.

transgression of the norm, that she died within 24 hours of assuming office.[1] Rather probably, the wrath of the gods was reinforced by some more secular potion administered by their earthly agents at the feasting.

As a concrete illustration of the pre-contact transmission of rank titles, the following example has been reconstructed.[2] In this instance the title Te Tika (mataiapo) changed hands four times and the title Kautai (also mataiapo) twice, before they became united as a result of the marriage of the holder of the title of Kautai to the eldest daughter of the holder of the title Te Tika. There were four further transmissions after the titles became held concurrently by the one individual (it is possible that the last one or even two of these occurred after European contact). Of the total of ten instances of transmission, five are from father to eldest son, one is from the last incumbent through his eldest daughter (who is married to a man of rank) to his second eldest grandson (the eldest grandson inherited his own father's title), one is by reversion from the last incumbent to his surviving elder brother, two are from the incumbent to his next younger brother (in at least one of the cases this was due to the elder brother dying without issue), and the last is from the incumbent who had no brother (and probably no issue) to his next most senior classificatory brother.

It will be noted that excepting where special circumstances prevailed the title passed from father to eldest son; that the title did not pass to brothers if the previous holder had male issue; and that females and their issue were omitted except in the special case of Paiau, the eldest

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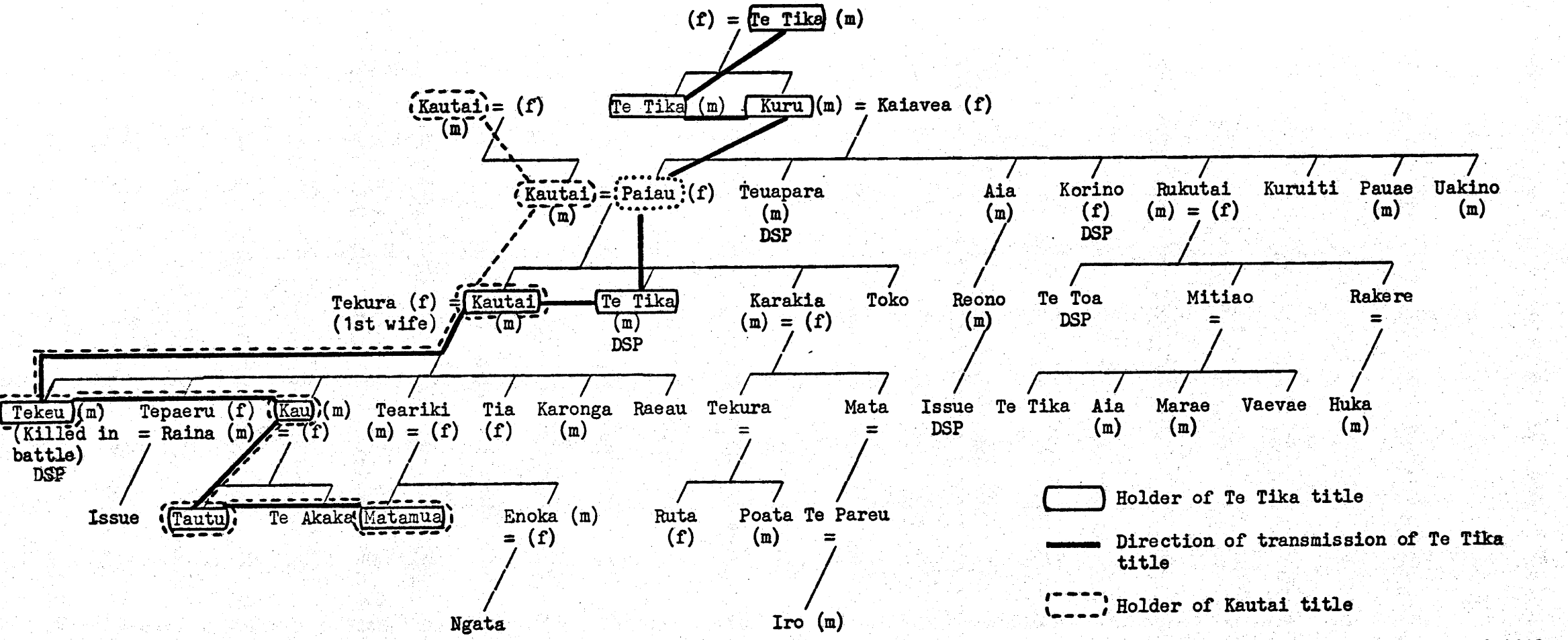
1 Terei, Tuatua Taito 31.

2 From evidence contained in MB 1:5-26 NLC. See diagram page 59.

offspring, being married to the holder of a title which appears (from the evidence) to have been in a position of dominance or control over the Te Tika lineage at the particular time.

A PRE-CONTACT EXAMPLE ILLUSTRATING THE PATTERN OF TRANSMISSION OF RANK TITLES



Chapter 4

THE DISTRIBUTION OF RIGHTS TO LAND

It is inappropriate to say that anyone 'owned' land in Rarotonga, for this might suggest that individuals had absolute power to use and dispose of land as they wished. In fact, more than one person was involved in every piece of land and the rights of every individual were conditioned, not only by rights of a similar order held by others in the same land, but also by a hierarchy of rights of different orders held at various levels within the society. No rights were recognized as belonging to the island as a whole,[1] and all the rights in any particular piece of land have never belonged to any one individual.

Land rights were held by social groups, and the rights of each group were nominally vested in the title name of the head of that group, and it was by that name that the lands were known. Lands of the Makea tribe were referred to as Makea lands (te enua o Makea) and decisions taken relative to those lands at the tribal level were made by the holder of the Makea Ariki title.[2] Those lands within

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[1] There were two possible (or partial) exceptions to this rule. The first was the road round the island, which was built centuries ago and is still in use. It was the approved route for all persons travelling between districts or tapere. However, the lands it traversed were those of the various lineages, and it was only safe to use the road in times of peace. The second partial exception occurred in the case of the few great marae which, though vested in particular ariki, were nevertheless used by the whole island on some occasions.

[2] The most usual decision taken at this level would be in respect to applying a ra'ui or customary prohibition on certain products from all the lands of the tribe.

the Makea tribal lands which were in the recognized possession of the Anautoa lineage would be referred to as Anautoa lands, and matters concerning those lands at the lineage level would be dealt with by the holder of the title of Anautoa Rangatira.[1] Likewise, within the Anautoa lineage, those lands allocated to a particular kiato would be referred to in the name of the head of that kiato. At a lower level again, the lands of particular households were referred to in the name of the household head. All arable land on the island was associated with a particular tribe and a particular lineage and that in current occupation at least with a particular kiato and/or household. There was no land which was not associated with a particular title,[2] and no title which was not associated with certain areas of land.

The role of the titleholder

The ariki was the titular head of the tribe, and in formal speech the whole of the lands of the tribe were often spoken of as the lands of the ariki. Likewise, the lands of smaller groups were referred to in the name of the lesser chief concerned. There is no doubt that the ariki were very highly respected and regarded as having considerable power, both sacred and secular. It is equally clear, however, that in regard to land these powers were tempered by the recognition of a series of other rights, and by the need to retain the support of the people.

In reading the source material it is often difficult to distinguish between the rights of the chief and the rights of his tribe or lineage, for the two are often spoken

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1 Decisions at this level would include those relating to the reallocation of lands of a kiato which had died out.

2 With the exception of some unused lands in the central mountainous core. This land is not included as belonging to the island as a whole, for while it may be so conceived today, there is no evidence of its having been so regarded in pre-contact times.

of synonymously, as exemplified in the following definition of the koutu:

> The koutu is...the seat or royal court of a reigning ariki.... It was the special place where all offerings...to the ancient gods were first assembled...where all the chiefs and persons of note...and members of the ariki family were buried... where all tribal annual feasts were held.... Each tribe had its principal koutu and lesser grade koutu. At the principal koutu the ariki usually...resided with...certain members of his family. Certain other chiefs and warriors whose tribal standing and functions made it necessary to do so also resided there.... The only tribal ranks that were entitled to the dignity of holding and possessing a koutu were those of ariki and mataiapo tutara.[1] The ariki would ex officio be the head of his particular koutu.... According to tribal accounts no one ariki or individual could claim the absolute ownership of a koutu, this place was in reality the property of the tribe, and the ariki as head of the tribe was the trustee....[2]

The koutu then may be regarded as ariki land or as tribal land, and indeed it was both. While koutu were always referred to as the koutu of the ariki concerned, it is apparent that the rights of the ariki and the tribe were closely interwoven and the right of the tribe or lineage was symbolized in the name of its chief. An example of this symbolic ownership is given in a description of the pre-contact ceremony for the investiture of a new ariki which says: 'At this time also is delivered over to the ariki the supremacy over the lands...'. A little further on the author notes that the ariki must also be given a 'small piece' of land at the koutu.[3] In other words, the ariki's right to the whole of the lands of the district was primarily a symbolic one, for these lands were already

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1 A mataiapo tutara is a mataiapo of very high standing who has some degree of influence over other mataiapo in the vicinity - see page 37 footnote 2.

2 Savage, 'Dictionary...'. Two of the most important koutu on the island at the time of first contact with Europeans were Arai-te-Tonga (the koutu of the Makeas) and Pu Kuru Vaa Nui (the koutu of the Pa Ariki).

3 Smith (quoting Tamarua), JPS 12:220.

divided among the chiefs and again among the minor lineages and households, and only the specific 'small piece' pertained to the ariki personally as the holder of the title.[1] The Land Court has repeatedly referred to the chiefs as trustees for their people and this notion of trusteeship is particularly appropriate, for a chief's actions were, ideally at least, actions for the group as a whole, on whose behalf he acted and spoke after due consultation. The question of chiefly rights in land, which was probably not very significant during the pre-contact era with its subsistence economy and segmented social groupings, became an issue of considerable importance after commercial agriculture began and land assumed a cash value.

Like other members of the tribe, the chiefs had particular lands for residence and food supply which were held in the same way as other family lands. If the successor to an arikiship was not living at the koutu, it would be necessary for him to reside there after his appointment, but he generally continued to draw on his family lands for his food supply.

Should any family die out, the land reverted to the source or line from which it had come - in practice to the chief of the line from whose lands it had originally been allotted. The chief (probably after consulting other members of the group) could either reallocate the land to some family which needed or wanted it, or he could leave it unoccupied, in which case it would be under the direct

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[1] Firth makes a similar point in reference to the New Zealand Maoris. He says '...the chief did not have a personal claim in all the lands of his tribe. To certain places he had an individual right, derived from his ancestors, from occupation or from some other cause, and he also possessed a claim in pieces of land held in common with his relatives. His interest in the remainder of the tribal territory is of a socio-political rather than an economic nature...'. - Firth, Economics of the New Zealand Maori 377.

control of himself or his successor chiefs until such time as it was reallocated. If he needed the land he could, of course, allot it to himself for use, but a distinction must be made between such lands as were taken over by the chief for the personal use of his own family, and those unused lands which he administered on behalf of the group for collective use, or for subsequent reallocation. Unallotted land of this latter type could be used to provide new areas for the settlement of families which had split as a result of increase in numbers or domestic dispute.

There was a certain flexibility as to place of residence and as to the admission of new members or the expulsion of others. It was the titleholder who, nominally at least, was responsible for such decisions.[1] Nevertheless, in the case of admissions at least, the wishes of the individual concerned were probably the dominant consideration.

Rights of the tribe

The rights of the tribe may be more properly described as those rights of its component individuals which were held in common or exercised collectively. Though the tribe was a significant unit in political affairs, tribal rights in land were limited.

Firstly there were rights of access. In daylight and on approved activities members of the tribe could move freely within the area provided they kept to the appropriate pathways and were on friendly terms with the lineages whose lands they were crossing.

Secondly there were rights to those lands specifically set aside for tribal use. These were small in area and

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[1] References to admissions and expulsions in indigenous writings almost invariably describe them as being effected by the titleholder even when (in the case of eviction) it is clear from the description that the whole group participated.

restricted to particular functions. There was the koutu of the ariki, and within the koutu there were one or more marae or sacred grounds. Marae were centres of religious activity, and the marae within a koutu was the centre of religious activity of the tribe.

The third tribal right was that to produce of all tribal lands for feasts involving the whole tribe. To these every household was expected to contribute. While this was a social obligation deriving from membership of the tribe, it was closely related to the occupation of land, for every primary member of the tribe was occupying his own portion of the lands within the tribal district;[1] permissive members also drew their sustenance from specific tribal lands, and contingent and secondary members contributed in recognition of their relationship to that tribe and to a specific lineage and tapere within it.

The existence of tribal meeting places and records of tribal meetings indicate that there was some system of consultation about affairs of common concern but there is no evidence to suggest that land rights were discussed at these meetings. Tribal aid was probably expected in the defence of tribal lands, though it was not always forthcoming and the available evidence shows that tribal unity was much more often achieved for defence than it was for attack. It might be expected that the forest lands would be held by the tribe in common but this was not so. By dividing the island into triangular segments running from a peak in the mountains

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[1] An exception to this rule occurs in the relatively few cases of persons exercising primary land rights in districts other than their own. In such cases they did contribute to certain functions organized by the tribe in whose district the land was situated, and their doing so was stated explicitly to be due to their land rights. In this sense they can be regarded as primary members of the tribe to which they made the contributions.

to a strip along the edge of the lagoon, each lineage had access to the trees and other products of the mountain soils,[1] and every segment of the land was identified with a particular lineage.[2]

Rights of the lineage

The major lineage was the largest and most permanent unit having control of the allocation and use of land. Tribal units expanded and contracted with the exigencies of warfare and the occasional transfer of political allegiance by some lineages from one tribe to another. The larger major lineages each occupied a whole valley and most of them trace that occupation to the time of settlement by Tangiia about 1200 A.D. As noted earlier, the original mataiapo were each allotted a tapere on which they settled with their families.[3] The boundary of each tapere ran from two points on the outer reef, across the lagoon and the adjacent lowlands, up two flanking ridges to end at a point in the central mountain core.[4] As the occupying lineages grew and split into separate minor lineages it was the duty of the mataiapo to allot to each segment sufficient land on which to live and plant its crops.

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1 The main products obtained from the mountains were building materials, berries, plantains and wildfowl.

2 There is in fact some land within the core of the central mountain complex which is not identified with any particular lineage. There are claims to its ownership in the literature based on ancient native myths, but the Native Land Court has never been called on to determine its ownership. It is not in use, and according to informants never has been. It was considered to be an area frequented by spirits.

3 See page 18.

4 There are a few atypical tapere (e.g. Tauae) which do not extend from the sea to the mountains.

Once allocated to a minor lineage, the rights of the major lineage over the land were limited to four - the symbolic right,[1] the right of reversion in the event of the line dying out,[2] and the right to participate in decisions involving the tapere as a whole, and rights to the lagoon. The tapere marae were held on a major lineage basis, and ceremonial at this level required contributions from the whole lineage. It should be made clear that whereas the minor lineage derived its right from the mataiapo or ariki concerned, the major lineage almost invariably held in its own right and not from an ariki.

Most of the tapere lands were subdivided among the minor lineages, each of which was headed by a rangatira or komono, or by the mataiapo himself. The minor lineage was the most important landholding unit in the system, its lands having clear-cut boundaries which were intended to be permanent, though reorganizations no doubt occurred. Such of the tapere lands as were not occupied by or allotted to particular minor lineages remained the common property of the major lineage; however, according to Land Court investigations, such lands were but few.

The most common indigenous pattern of division within the tapere was to take the central stream-bed as the basic boundary, then allocate sections of land running at right angles from the stream-bed back to the flanking ridge which formed the boundary with the next tapere. On the flat lands the ancient inland road was taken as the starting point lands were allocated at right angles to the road running either seaward to the lagoon or inland to the hills. This pattern of land division is illustrated by the attached map of Turangi and adjacent tapere.

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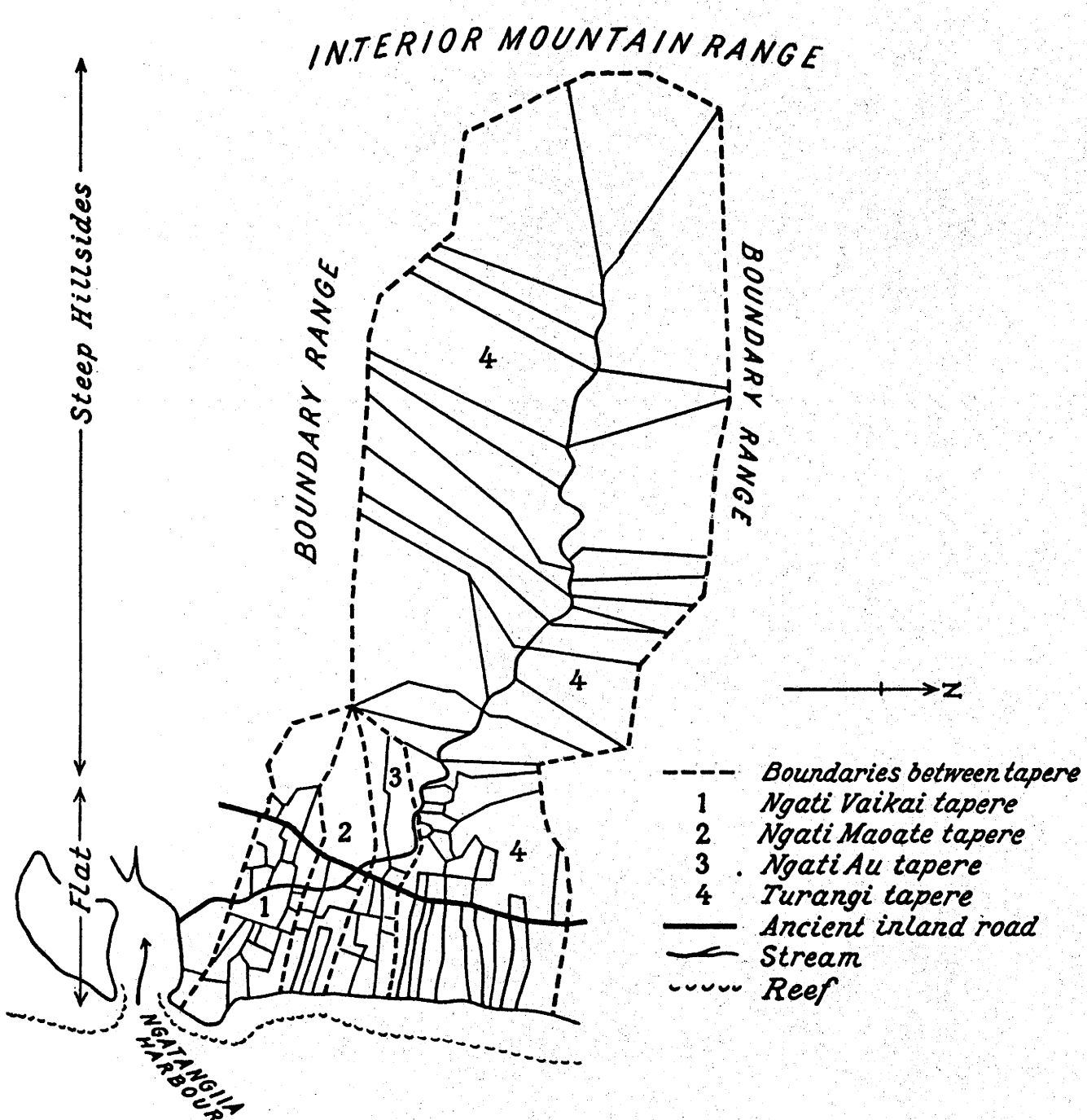
1 As discussed on pages 62-3.

2 See pages 92-3.

TURANGI & ADJACENT TAPERE
RAROTONGA

10 0 10 20 30 40 50 CHAINS

Traced from maps supplied by the Chief Surveyor, Rarotonga. Land divisions as determined by Land Court investigation.



THE PATTERN OF LAND DIVISION:

a) IN THE VALLEY AT RIGHT ANGLES TO THE STREAM-BED,

b) ON THE FLAT LAND AT RIGHT ANGLES TO THE INLAND ROAD.

In some cases the minor lineage was allocated a 'slice' of the tapere running from the sea to the mountains, and in others it was allocated particular separate portions of land such that it held sufficient of each category of land for its particular needs. In the case of the valleys, while the lands allocated ran from the stream-bed to the ridge-top, the only lands planted were close to the stream-bed. Coconut and other trees might be planted on the gentle slopes, but the steep hillsides, which constituted the bulk of the land area, were not planted. On these hillsides, despite the nominal allocation to a particular minor lineage, members of the major lineage could collect wild fruits and hunt wildfowl. The extent of this right to forage is not known but present-day informants say that it did not extend to the cutting of trees for building purposes without permission.

Rights to the lagoon and its products were generally exercised by the matakeinanga occupying the tapere, but the extent of subdivision within the tapere is not clear, for while the boundary point on the outer edge of the reef was known for district and tapere boundaries[1] there was some uncertainty as to whether or not internal boundaries ended at an identifiable point.[2] There was certainly no system of artificial marking within the lagoon, though named coral rocks were often quoted in early Court cases as being boundary marks.[3] Informants gave conflicting accounts of the rights to fish and other produce within the lagoon, some considering that these rights belonged exclusively to

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1 Informants today still claim to know these boundaries, but as all land below high water mark has since 1915 been vested in the Crown and is accessible to all, there has been no occasion to test the accuracy of these claims.

2 Though in some cases they did so.

3 E.g. MB 1:107 and 163 NLC.

the major lineage which owned that portion of the lagoon, and that any others wishing to fish there would require the prior permission of the mataiapo concerned. Others, however, claimed that one could fish or collect seafoods in any part of the lagoon fronting the tribal district. All were of the opinion that this right lay only within the tribal district, and that any person fishing in a tapere to which he did not belong should send a token of the catch to the head of the owning lineage.[1]

The right to take coral rock for building marae or other purposes, or to take pebbles for making pathways, lay only with the lineage which owned the portion of lagoon concerned. For any others to make use of these materials required prior consent. Wyatt Gill describes public fish poisoning drives which used to be held in Rarotonga and in which the whole island participated.[2] This, however, was some time after the introduction of the gospel and there is no indication to show whether or not drives on this scale took place in the pre-contact era. Fishweirs belonged to the extended family whose ancestors had built them, and the use of them without permission was regarded as theft.[3]

Reef passages giving access from the lagoon to the open sea were associated with the senior title of the major lineage of the tapere in which they were found.[4] Buck claims that the titleholder could claim a portion of the catch from any fisherman using that passage.[5] Traditions amply confirm

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1 This custom has long since ceased on the island.

2 Gill, Jottings... 140-2.

3 Buck, Arts and Crafts... 217. This remains the case today.

4 Confirmatory evidence is given by witnesses in the Land Court in AMB 1:15 and MB 19:170 NLC.

5 Buck, Arts and Crafts... 210.

this, and there is a legend of a greedy chief who, too demanding in the exercise of this prerogative, was banished by his people.[1] The passage can be regarded as belonging either to the lineage or the chief, but it appears more reasonable to assume that a lineage member made his contribution to his chief as head of the social group, than to regard it as payment for the use of his reef passage. Likewise the contributions of strangers using the passage were presumably to the chief as head of the owning lineage and not personally in his capacity as 'owner'. It is very doubtful, indeed, that a chief could deny any kinsman use of the passage, and quite impossible for him to reserve the use of it to himself alone. The rights in the passage then, were of three kinds - the right of use by all members of the lineage subject to appropriate contributions to the chief; the right of ownership by the lineage which was vested in the chief as head of the lineage, and substantiated by the fact that non-members required permission and were required to render tribute to the chief as representative of the owning lineage; and the right of the chief to demand a proportion of the catch.

Separate treatment of the kiato does not appear to be merited, as they functioned in the same way as the minor lineages of which they were a part, though necessarily on a smaller scale.

Rights of the extended family

The extended family constituted the elementary unit of landholding and was identified with the use of particular portions of the land of the minor lineage. The household (the residential core of the extended family) was the

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[1] Taraare, MS 112-13.

elementary unit of production and consumption. It is said that even when the 'household' consisted of more than one sleeping house there was but one cooking house.[1] The nuclear family does not seem to have existed as a distinct social unit for production or consumption.[2] In some cases the household may have constituted the residential core of a minor lineage, but more commonly it seems that each minor lineage consisted of six or more households. Each household lived on one of the lands from which it drew subsistence in a hamlet located near the inland road, some set in only about ten to thirty paces from the road and others set further back in the valley.[3] In addition to the right to specific portions of land, households (or in some cases minor lineages) sometimes held rights to bathing pools, shrimp beds and ponds for soaking yams in streams that were passing through lands other than their own. Other subsidiary rights held on land other than that in normal occupation included those to water derived by irrigation channels from the property of another. Owing to the physical configuration of the tapere such rights were, of course, held only between members of the same matakeinanga.

The boundaries of the lands of the households were less permanently defined than those of the lineages, and were subject to more frequent adjustment at the direction of the minor lineage head, in order to better comply with the changing needs of the various households. So far as can be ascertained the nuclear families within the household were

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1 Examples of this pattern of domestic living are still seen in some of the outer islands today.

2 As William Gill observed, 'A family, as the term signifies to an English ear, was not known among this people'. - Gems... 12.

3 Williams, A Narrative... 207. The oven stones and kitchen middens are in many instances still visible today.

not differentiated in their use of land, but satisfactory evidence on the point is lacking. However, the proprietary rights of many of the component members differed from one another. For instance, the rights of wives were of a different order from those of husbands; the rights of daughters were of a different order from those of sons; the rights of children of uxorilocal marriages were not necessarily the same as those of virilocal marriages, and the rights of children of one wife were different from those of another wife.

Rights of the individual

The rights of the individual were invariably shared. No doubt there were instances of individuals being the sole survivors of families which died out, and such persons could, theoretically at least, inherit the whole of the family lands. Such an atypical situation, however, could not last for long, for the individual concerned would either marry, in which case he would normally produce multiple offspring; or alternatively he would die without issue, in which case the lands would revert to the head of the lineage for reallocation to some group which was in need.

The fact that rights were invariably held by more than one person has often led to the view that they were held in common, and that the rights of each member were equal, or of the same order as those of the others. The blanket term 'communal tenure' has often been used with this connotation. To the extent that the term is given this connotation, it is quite inappropriate to describe the land tenure system of Rarotonga, and probably equally inappropriate for many other societies to which it is applied.[1] It hides, or denies the

[1] While this term is perfectly appropriate to an institution such as the Israeli kibbutz, it is confusing indeed to categorize the Rarotongan tenure system by the same term as is used to describe a kibbutz.

existence of, the diverse nature and complex structure of the rights held by the various individuals and groups within the society.

To illustrate this point let us reconstruct a hypothetical household in pre-contact Rarotonga and examine the land rights associated with it.[1] There would be some lands in which many people held rights concurrently, but in no case would their rights be the same. While between them they would hold rights in many pieces of land, let us consider their relative rights in one portion only - a taro patch which belonged to the forbears of B and the right to which passed to him by the process of inheritance. The right to plant the patch rests ultimately with him though some other members of the household may be entitled to share in decisions regarding its use. Some of them, however, such as J and L, would have no say at all. N would have a special right as this was one of the lands in which, at the time of his adoption, it was arranged that he would have rights. B would have the right to set aside this patch as a marriage portion for his daughter G. No other member of the household would have this right, though H, as heir to the title, and A may be entitled to object if the remaining lands of the household were inadequate.

The rights of C are dependent on her marriage to B. If the marriage breaks up her rights lapse, but his are unaffected. If he dies, the continuation of her right to use will be a matter for the next titleholder (probably H) to decide. At the moment, the probability of C being allowed to remain and use the land if her husband dies is greater than that of J being allowed to remain if her husband dies, for J is younger, her family has not yet established a

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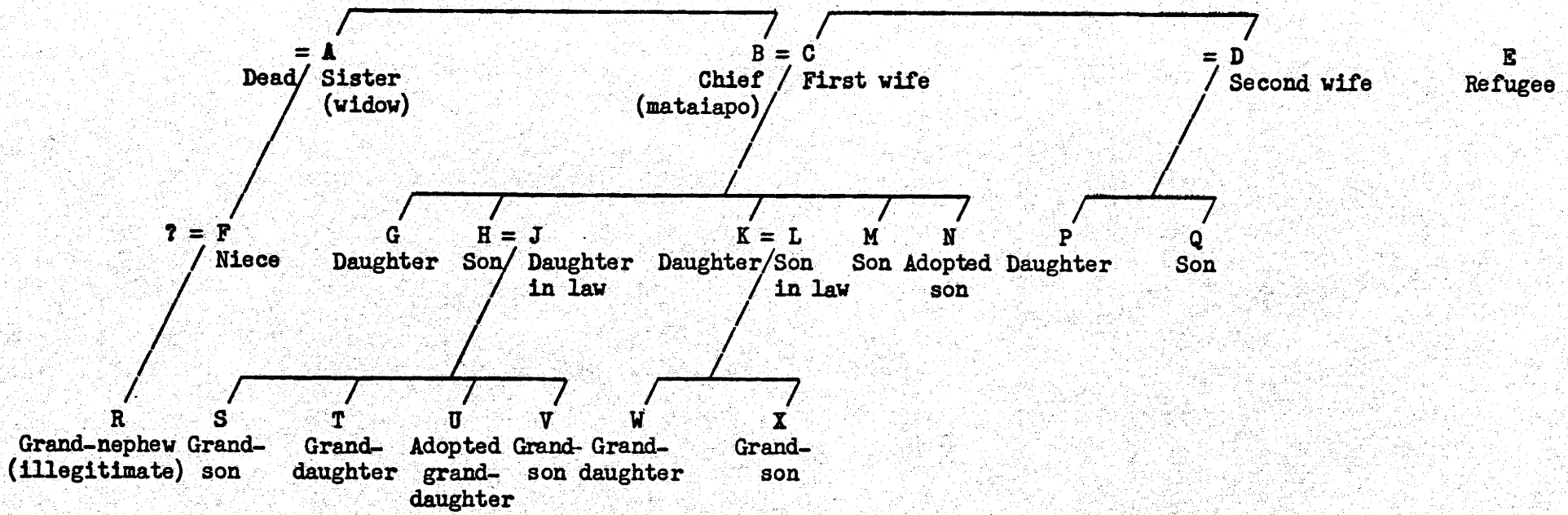
[1] The composition of the household is shown in the diagram on next page.

A HYPOTHETICAL PRE-CONTACT HOUSEHOLD IN RAROTONGA



Note: All relationships are given with reference to B - the head of the household

household of its own, and her husband is untitled. The rights of G are different from those of her sister K, for G is betrothed to a chief of another lineage and her children will inherit their primary rights from their father. As heir to the title, as a married man with male issue, and as senior male sibling, the right of H to deliberate on the devise of the patch by will is not the same as the right of M, his younger unmarried brother. The children designated R to X all have rights, but as minors they cannot themselves exercise them as yet. The potential rights of the males among them are different from those of the females, those of the adoptee are different from those of the born issue, those of the older are different from those of the younger, and those of the progeny of H are different from those of his younger sister K.

The temporal aspect of each right differs. In the event of the continued planting of the patch, the male agnates have a lifetime right plus the ability to pass that right to their children. This right is modified if they leave the household to reside elsewhere. That of the refugee E ceases on his death and does not pass to his issue unless specific provision is made for them. That of the female agnates continues only until such time as they marry, when, though they do not lose all rights, the nature of them changes.

There would be some lands in which some of these people held rights, but others held none at all. For instance, C would still have secondary rights in the lands of her natal lineage. B would have no rights at all in these lands. R, who was born into his maternal grandfather's lineage and spent his early years there, would have the right, subject to certain conditions, to return to that lineage. No other member of the household, with the possible exception of his

mother F, has that right. R would also have a particular right to the portion of land which was set aside as a marriage portion for his maternal grandmother A and which she had subsequently passed to him.[1] He would not hold all the rights in this plot, for if he dies without issue then the land reverts to the source which gave it, and the agnatic descendants of the donor may then exercise their various rights of reversion.

Reference is frequently made by observers of the Rarotongan land system to decisions being made by the family group and convey the impression that all had equal rights to participate. Just what is meant by the family group is seldom specified. Let us imagine that R did die. The land given him by his grandmother, A, would revert to its source - in this case the deceased father of B who held the title at the time the land was given to A. Who would decide its reallocation? The participation of each member of the household would not be at all equal. Those who were not descended from the father of B would have no say at all; the children would have no say on account of their age, though particular adults would no doubt uphold their interests; A would have a special role as the person to whom the land was originally given, but as she is past child-bearing, no longer has any living male issue, and resides as an aged dependant in the household, her views may not be very influential. F would probably have little, if any, influence, firstly because her mother A, from whom she derived her right, was still alive; and secondly because, whereas her mother was the first-born daughter of a chief of <u>this</u> lineage, F was the daughter of a chief of another lineage. If she were to get marriage lands (which is most unlikely since she is living

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[1] As discussed on pages 93-5.

in her mother's lineage) she would derive them from her father's lineage. As chief and household head, the influence of B would be considerable, but so also might that of his younger brothers who reside in nearby households.

The above description sets out only a few of the rights held within the household concerned. A fully itemized account of all the individual rights of any household would be very long indeed.

Within the extended family as within other social groups the rights of the component individuals were differentiated by a system of priorities which gave precedence to males over females, to titleholders over commoners, to older over younger siblings, to residents over absentees, to earlier claimants over later ones, to agnates over cognates, and to agnates over affines.[1] Such priorities, which rest on preferences for masculinity, temporal precedence and local residence, were not invariably adhered to, but were sometimes modified in relation to personal qualities and particular circumstances. Furthermore, the nature of the rights differed according to whether they related to taro swamps, unused agricultural land, house sites, or forest land. Within this framework allowance was made for personal effort and provided an individual planted on land to which he held an appropriate right the subsequent crop belonged to him, though subject to his obligations to his household, his lineage and his kindred.

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[1] These criteria were reinforced by the concepts of mana (broadly 'power') and tapu (broadly 'sanctity') such that, other things being equal, those persons whose descent was traced through lines of males, and through generations of first-born sons, and supported by centuries of occupation of the same area of land were possessed of the greatest degrees of both mana and tapu, and those whose connections were traced through females, through junior siblings, and from persons living elsewhere were possessed of the least of these qualities.

Individual rights to self-propagated crops are not clear from the source material and we must rely on present-day information and practice. The fruits of the wild plantain (musa fehi), which grows in dense clumps at the head of almost every valley on the island, is said to have been the common property of the minor lineage. A prohibition was imposed on the gathering of the crop until a sufficient quantity was considered to be ripe, at which time the prohibition was lifted and the harvesting was made a festive occasion. Secondary and contingent members of the owning lineage could come and join in the party and it was customary to send a bunch to those who did not come. This practice is still observed in some areas.[1] On subsequent occasions only members of the local group could collect the fruit, though relatives who requested access to it could hardly be declined. The less important wild fruits are today harvested with little regard for rights of ownership in the lands on which they grow, but informants were of the opinion that under Maori[2] custom such products were reserved for members of the matakeinanga occupying the tapere in which they grew, and in some instances to particular sub-groups within it.

The rights of any individual were clearly dependent on his or her status within, or relationship to, particular social groups, and no individual could hold or exercise any land rights except as a function of his membership of a social group. An individual's connection with any particular

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1 Some lineages today even go so far as to advertise the ra'ui and its opening in the daily press - e.g. Cook Islands News 15.12.1959 re the opening of the prohibition on plantains in the Takuvaine valley.

2 As noted in the Glossary, the term 'Maori' is used here to refer to the indigenous people of the Cook Islands, not those of the mainland of New Zealand.

portion of land and with the descent group to which that land belonged fell into one of the following four categories.

Firstly there were the rights of primary members of the lineage or other descent group, whose rights to the land will be referred to as primary rights, i.e. they could plant and harvest as of right. While an individual normally held primary rights in one lineage only, affiliation was not invariably so clear-cut. It was not uncommon to provide for a relative (particularly a child) for a period without adopting it fully, and such a person could drift between agnatic kin and matrikin or pay prolonged visits which might or might not become permanent. During such periods of transition one could exercise certain rights as a primary rightholder in two lineages. Sooner or later, and generally in the event of marriage, one would be forced to opt for the one or the other, though it is conceivable that in rare instances primary rights could be held in two lineages. Such an instance occurred in the early nineteenth century as a result of the inheritance of a rangatira title through the maternal line, and later the inheritance of an ariki title through the paternal line, due to a combination of unusual demographic and political circumstances.[1] Such a state of affairs could not last indefinitely, for either the lesser title was absorbed by the greater and the lineages accordingly became one, or the lesser title was given to a son or other relative and the separate identity of the two lineages restored.[2]

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1 MB 21:147-50 NLC.

2 In the instance involving two mataiapo titles as illustrated by diagram on page 59 above, the two titles were first given to two sons with the obvious intention of maintaining the separate identity of the lineages, but due to the untimely death of the junior titleholder, the senior holder then amalgamated the lineages. During the nineteenth century (later than the period shown on the genealogy) the amalgamated lineage again split and two separate titleholders were appointed.

Next there were the rights of contingent members of a lineage whose right to plant and harvest the lands of their natal lineages was contingent on return there or on express permission. Their rights to the lineage lands will be referred to as contingent rights.

Thirdly, there were the rights of secondary members of the lineage (i.e. the children of contingent members). We will speak of their rights to land as secondary rights, for while it was generally accepted that they would be admitted to that lineage if they wished to join it, and could thereby gain primary membership of it, they did not under normal circumstances plant there while residing in another lineage. To a lesser degree, the children of secondary members of a lineage were themselves secondary members, and they also had a potential, but markedly weaker, right to the land. They will be referred to as distant secondary rights. In the event of dire necessity there was no limit to the lengths one could trace secondary affiliations of this sort, but in practice they were seldom revived to the extent of exercising land rights.[1]

Fourthly, there were the permissive members of the lineage, whose rights to the land will be spoken of as permissive rights. Such rights could not be transmitted and their maximum duration was accordingly the life-time of the holder.

A distinction may be drawn between proprietary rights in the land on the one hand, and rights to its usufruct on the other. Proprietary rights were held by the various descent groups, and as entry to any of these groups could only be acquired by descent or adoption, these rights were

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[1] The fact of 'belonging' to a lineage was for secondary members more in the nature of an idiom of kinship and its obligations and responsibilities, than it was a recognition of land rights.

held by primary, contingent and secondary members of the groups concerned (the status of permissive members was such that they did not have any proprietary rights). Usufructuary rights (with the exception of land set aside for special purposes such as marriage lands, and rights to festive harvesting of self-propagated crops like plantains) were exercised only by persons resident in the area - the primary and permissive members of the groups concerned. Only the primary members held both proprietary and usufructuary rights concurrently.

Women were not eligible as heads of any social groups and accordingly they could not exercise such rights as were vested in rank titles. As a member of a household, every woman shared a joint use-right with the other residents and as a member of a descent group she held proprietary rights in that group's lands. Those women who did not themselves exercise primary rights in their lineage lands were nevertheless frequently the channel through which males acquired their rights. In the event of adoption or of there being no resident sons to inherit land rights, these often passed to grandsons through a daughter. The frequency of such a pattern of inheritance is not known, but natural causes and the extent of warfare must frequently have resulted in the loss of direct male heirs.[1]

A widow was often allowed to remain in her husband's household after his death, and if she had adult sons this seems to have been the normal pattern. Having no blood right in the household, her continued residence was by permission and not as of right. Williams mentions that

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[1] Maretu claims that 730 people were killed in the wars between Takitumu and Avarua in the second decade of the nineteenth century. - MS 19. This is possibly an exaggerated figure, but available descriptions of the wars indicate that the losses must have been considerable.

widows and their children were evicted on the death of the husband, and though this no doubt occurred in some cases - such as when the wife had been unpopular or childless, or had only young children - it does not seem to have been the rule.[1] The levirate was quite commonly practised,[2] and accordingly the number of women who resumed land rights in their natal lineages due to death of their spouses was probably quite a small proportion of the total.

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1 Williams, A Narrative... 139. In the normal course of events the heir to the headship of the family would be the widow's own son who would have acquired rights from his deceased father. In view of the predominantly patrilocal pattern of residence removal from the family cannot have been the norm. Present-day informants say that if a woman was childless, or if she had only young children, it was customary for her to return to her born family, and this is confirmed by Gill, AAAS 331.

2 See e.g. Savage, 'Iro Nui Ma Oata' 58.

Chapter 5

THE ACQUISITION AND LOSS OF RIGHTS TO LAND

The following discussion of the means by which land rights were acquired in pre-contact times will provide a baseline for later comparison with the processes operating at various stages of the post-contact period. Presumably the landholding system was not static during the pre-contact era, and any reference to a custom existing in that era should (unless the context indicates otherwise) be taken to mean that it was effective at the time of first European contact, and not necessarily that it had applied from the time of first settlement.

By discovery and settlement

It was by this means that the first settlers obtained possession of the island. How they subdivided and exploited their lands is no longer known. However, tradition records that they came from somewhere in the area now known as French Polynesia, and it is therefore likely that they brought with them a system of land tenure which fell within the same broad category as that brought by the later migrants from the same culture area.

Lands thus acquired could be retained only so long as no other settlers arrived, or if they did, then only so long as the lands could be defended. From what little is known of this very early phase, it seems that the original colonists were successful in retaining considerable segments of the island despite competition from later migrants. With the advent of Tangiia and Karika, however, they

relinquished a large proportion of their land rights along with their political sovereignty, and during the Tangiia-Karika regime, the whole island was formally parcelled out to one chief or another. No longer could land rights be acquired by the simple expedient of discovery and settlement alone.

By conquest

Throughout the pre-contact era, conquest constituted the ultimate title to land; all land being held either by conquest or the ability to resist it.[1] The act of conquest resulted in the transfer of the land rights of the conquered in that particular area to the hands of the victors, who subsequently dealt with them in one of the following four ways.

Firstly they could retain the rights permanently, and in the cases where the defeated party were exterminated this was invariably the case. The conquerors usually divided the lands among themselves, and settled some of their number there, for empty lands were liable to be settled by someone, and the surest way to retain title was to occupy.

Not infrequently, however, the losing party fled rather than risk extermination, and sought asylum in some lineage in another area (if possible, one to which they could claim relationship).[2] They could either request assistance to

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1 In all the records of pre-contact battles in the vernacular source material there are few indeed wherein a land dispute is given as the cause of the outbreak. The most common causes were disputes over rank titles (which, of course, carried certain land rights with them), insults, and actual or attempted adultery with the wives of chiefs. Nevertheless, it is clear that the acquisition of land was often an important motive for warfare, and that the exchange of insults was the appropriate provocation to justify the commencement of hostilities.

2 Frequently the accounts do not give sufficient detail to determine whether or not the refugees sought out kin in their search for asylum. In many cases, however, the fact of relationship is stated, but in no case is there evidence

enable a counter-attack to be made[1] or they could accept defeat and take no further action with regard to the lands they had lost. When the anger had subsided and a decent period had elapsed, the rival groups often wished to restore harmonious relations, for it must be remembered that the adversaries were generally kin, and that there were centripetal forces tending to bring them together for mutual assistance and family celebrations as well as the disintegrative forces which brought them into conflict. Provided the resources were adequate to support them, and provided effective social relations could be maintained, every social group was strengthened by additional members.

It is therefore not surprising that many instances occur wherein individuals or families which had been defeated and banished were later permitted to return and have some or all of their lands restored to them. Sometimes this occurred within the lifetime of the actual aggressors, sometimes not until the next generation or even later.[2]

Alternatively again, the land was sometimes restored in full, but conditionally. The defeated party might be required to render tribute periodically in acknowledgment of

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2 (continued from previous page)
to the effect that the refugee and the host were unrelated. It seems probable from the evidence that one sought out the most powerful relative from whom shelter could be expected.

1 It was often not possible to make such an attempt immediately, and it was customary to make tattoo marks on the throat and arms as a reminder that vengeance was yet to be exacted. If it were not satisfied within the lifetime of the aggrieved party then he could pass it on to one of his children who was then obliged to act himself or to pass the mark on to his children. - Pitman, Journal 2.6.1829.

2 For example, in the late eighteenth century Tinomana Ariki was insulted by a member of one of the descent groups living in the district. Tinomana assembled a war party and attacked the offending family, killing all except one. The conquered lands were allocated among Tinomana's followers, but when the sole survivor attained manhood, he was given a particular portion of the lands of his descent group, and was later elevated to the rank of mataiapo. - Terei, Tuatua Taito 43-4.

their subordinate status, or they might only be required to concede the point which had been at issue. In such cases the defeated party were not given full title to the land, but rather a conditional title subject to the fulfilment of certain obligations. Instances are also recorded where the defending party, realizing that they could not withstand the assault, surrendered and were allowed to remain in undisturbed occupation of their lands. In these cases, having demonstrated their superiority and received a public acknowledgment of submission (gilded with appropriate gifts) the victors were prepared to act magnanimously.[1]

Finally, there were instances where the conquerors restored the lands completely and unconditionally. Survivors who fled would constitute a lingering threat to the conquerors, who would be well aware that if a suitable opportunity presented itself the exiles would attempt to repossess the disputed lands. It was probably for this reason that attacking parties attempted to exterminate their enemies to a man. Thus, if the defeated survivors were numerous, or if they were supported by strong friends, it was unusual for the victors to try to retain all the lands permanently. Conquerors sometimes took the pigs and chattels of their enemies and destroyed their crops, houses and marae. After retaining the control of the lands for some time they allowed the fugitives to return and repossess their lands, provided they showed due humility in doing so.[2]

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1 E.g. Maretu, MS 84.

2 The classic and best documented case in this category is that of the defeat and driving away of the Avarua people in about 1815 at the hands of Pa and Kainuku, and their subsequent restoration about seven years later. All their pigs were taken and all their crops destroyed. Not a coconut or a breadfruit tree was left unscathed. The lands, however, were restored in their entirety. - Maretu, MS 18-29.

By allocation and occupation within the landholding group

Initially, having assumed supremacy over the island, the people of Tangiia's time may be said to have held in common, but before long they divided out the lands among themselves. Following this primary allocation, with its well defined boundaries between tapere, the lands within each tapere were used by the respective lineages as they required them. In the early stages there would have been ample land for all, with surpluses in every tapere, and the nucleus who settled in each would have had ample room to expand and shift its cultivations, for, as different crops required different soil conditions, each family needed several pieces of land under cultivation at any one time. As families grew, their cultivations would spread over increasingly wider areas of the tapere land, and smaller groups would hive off from the parent body to set up their own households. Being separate units of production and consumption they would plant their crops separately from the parent group, and in the course of time the areas planted by them would become identified as theirs.

When divisions were made between the more important families such that each constituted a separate minor lineage, their respective land boundaries seem invariably to have been specified, but boundaries between the garden crops of households within the same minor lineage seem to have been determined by the extremities of the area cropped rather than by predetermined spatial limits of rights. These boundaries seem to have been flexible, and not to have retained any long-term identity once the area enclosed by them was no longer in use.[1] In other words, occupation rather than allocation usually determined the relative

[1] This does not apply to irrigated taro patches which did retain long-term identity.

spheres of influence within the minor lineage. With the passage of time and the growth of population, repeated use would lead to the boundaries becoming defined with increasing clarity, but even by the time of the Land Court in 1902 there were considerable areas which were not associated with any particular household, though almost all lands were associated with a particular minor lineage.

Another form of allocation occurred when a social group with a defined area of land became too large to be an effective unit, or when strife developed within it. Then the group would split, and either one party could ask the head of their lineage to allot them another piece of the lineage lands, or the existing lands could be partitioned and henceforth the two factions would function as separate units. Presumably this latter course was increasingly resorted to in the later years when a growing population forced closer settlement. Partition seems to have occurred most frequently after the death of a metua (the patriarch or household head) in those cases where there was disagreement as to who should succeed to his role. The normal pattern seems to have been for this position to fall to the deceased's eldest son, or, if he were too young, or if there were no sons, then to his next eldest brother. In either case the choice would be conditional on the son or brother concerned being resident there, for the role of metua was one requiring constant attendance within the family. If two aspirants to the position could not be reconciled, then partition was the simplest solution.

By inheritance

A boy usually lived on the lands of his father, and as he grew to adulthood he participated in the gardening and food gathering activities and learned the boundaries of such

lands as were shared with other members of his household, and those shared with the rest of the lineage. As post-marital residence was most commonly virilocal he spent his whole life on the same area of land and brought his children up on it. From birth he was entitled, as a primary member of the group, to sustenance from the land; and provided he did not leave the family to live elsewhere, this right continued throughout his lifetime. His rights in the lands occupied by his household were usually not to specific portions, but rather to a share in the use and administration of the lands, for as the household functioned as the elementary production and consumption unit, many of his rights and obligations in respect to the use of family lands were exercised in common.

It is necessary to distinguish between proprietary rights which were acquired by inheritance and rights which existed merely as a by-product of one's residence in the household. The latter (those of wives and other permissive members) were never more than conditional rights of use. In so far as land use was concerned, it could be said that the living members of the household succeeded in common to the rights in common of those who died or left the family. Perhaps the most appropriate description is that attributed to an African chief who said 'We conceive of the land as belonging to a vast family, many of whom are dead, a few of whom are living, and countless members of which are yet unborn'.[1]

The administration of the lands of the household centred on the senior resident male member, though an aged family head could retire and pass the responsibilities on to his successor - usually his eldest son. It was presumably at the level of the minor lineage that the most common readjustments in land rights of the component groups were made

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[1] Meek, Land Law and Custom in the Colonies, epigraph.

in accordance with the changing needs of constituent families. The administration of lands at the major lineage and tribal levels was likewise vested in the respective titleholders, though this is not meant to imply an autocratic power, for at all levels there was a tradition of consultation with the heads of component sub-groups before any important decisions were taken.

Wills[1] were often made regarding the disposition of land rights. Ideally they were made from the death-bed, all primary and contingent members of the lineage being present, as well as the titleholder. At the burial, the will of the deceased was made known to the assembled elders, and either ratified or modified.[2] The necessity for a will to be made public was clearly stated in the laws of Rarotonga which were made shortly after the arrival of the missionaries.[3]

The rights which could be transferred by will were strictly limited.[4] One could not will the rights one acquired as a member of the lineage (e.g. to bush land, the lagoon, the common paths and water-holes) but only those rights in particular portions of planting land which adhered to one personally. Even then the consent of the lineage was necessary. Many wills merely allocated rights in the same way as they would have gone if no will had been made, though special provision was sometimes made for the interests of persons whose rights were tenuous and who might otherwise

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1 The indigenous term is 'reo iku'.

2 Gill, Life... 77.

3 'Laws of Rarotonga...' 1879 clause 14. These laws, ostensibly made by the 'King and chiefs' were greatly influenced by the English missionaries. The principles of the law on wills, however, are in accord with evidence of this custom from other sources.

4 As a man's pigs, chickens and mature crops were consumed at his death feast, wills did not apply to such chattels. This custom is still adhered to on some of the outer islands, and ceased on Atiu less than a decade ago.

have been ejected after the death of those who had been responsible for them. These included refugees, adoptees and men living uxorilocally.

A woman could make a will disposing of the rights in her marriage land, but the disposition had to be within her own issue. The only other circumstance under which it was considered proper for a woman to make a will was to devolve a lifetime use-right on her husband if he was living on her land. There is no evidence of a corresponding right of a dying husband to grant a life interest to his wife. With the exception of wills by women in the atypical circumstances described all available examples of wills are those by titleholders - rangatira, mataiapo or ariki. Whether the lack of evidence as to wills of others is due to their not being of sufficient social and economic importance to record, or to the fact that commoners did not have the power to devise land rights by will, is not clear.

The only other circumstances whereby one could inherit primary land rights in lineages other than one's own born or adopted lineage were when lands which were given in marriage had subsequently passed to a secondary member,[1] or when a landholding group was without direct male issue.[2] Illegitimate children were accepted as part of the household of their mother and exercised land rights there like any other members. In view of the extent of pre-marital freedom permitted, it is likely that considerable numbers of children would have come within this category.

By reversion

If a right-holder died without male issue, his rights normally fell to those who held in common with him. For

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1 See pages 93-5.

2 In which case the land could be inherited from the maternal grandfather.

example, if the man had surviving brothers who shared the land with him, then his rights fell to them and their issue. Alternatively, the rights could pass through a daughter to his grandson, and instances of this occurring were common. In the event of there being neither siblings nor issue, the rights were traced back to the source whence they came, and from there to the nearest surviving relative. If no such relatives were traceable, then the land reverted to the chief of the lineage until such time as he chose to allot it to some needful member. As there was no rigid set of priorities for inheritance in cases where there were neither issue nor resident siblings, the way was left open for a number of lesser claimants, and the settlement of their various claims, being so nebulously based, was conducive to dispute.

It is not likely that many whole lineages died out, for if numbers were dwindling too low, new members could be adopted, or the waning lineage could merge with a contiguous (and undoubtedly related) lineage.[1] A lineage with few members presumably had relatively extensive land resources and was thus well situated to arrange uxorilocal marriages and increase its strength by this means.

By marriage

In the normal course of events a woman did not exercise rights of use in her own family lands after she married, but she could return to them if need be, and secondary rights to those lands passed through her to her children.

There was, however, one circumstance under which a woman who was absent could, as of right, plant, harvest and control

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[1] This may have been done either voluntarily or under pressure. Strong neighbours would be tempted to spread into vacant lands, and a voluntary merger may have been preferable to the possibility of loss by force.

the disposition of a section of land in her born lineage. This was in the event of land being given as a 'marriage portion'.[1] The nature of her right in the marriage portion was such that, despite non-residence, it will be referred to as a primary right. Land was set aside as a marriage portion only when the first-born daughter of a high-ranking chief married a man of similar standing.[2] While such land carried great prestige value, it was not a dowry for no rights in it passed to the husband or his family. It was simply the setting aside of a portion of land for the bride, and, more particularly, her issue. She could use the land herself, or could pass it on to one or more of her children for their use. While the land was specifically set aside for the daughter, the donor lineage retained residual rights to it. Moreover, she still had to observe appropriate obligations to her lineage in other respects or her rights in the land could be extinguished.

A chief wishing to set aside land as a marriage portion was not required to consult anyone though he could only allocate it from the lands of his own minor lineage. The gift was announced at the wedding feast.

Ideally, the marriage portion was not used by anyone other than the woman to whom it was given and by her issue, but in fact it was common for her to allow her family of origin to make use of it until such time as she or her children needed it. While she could not dispose of the land, she could allow a custodian (usually a relative) to look after it for her. In such a case, along with the

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1 Such land was known as 'enua tao'anga rima' (it was known as 'topenga piro' on some islands).

2 All recorded instances of marriage gifts of land concern the daughters of chiefs. While some informants claimed that only ariki and mataiapo had the privilege of setting aside such lands, occasional examples of leading rangatira having done so have been noted.

custodian's delegated right to use the land, there was the obligation to supply food for feasts when required by the owner.[1]

If the bride left her husband she and her children could return to her own extended family and could use the land set aside for her. Normally though, if she was accepted back, she would participate jointly in the use of the family lands, and unless she or her children made use of it then it would lose its character as a marriage gift and become again regarded as family land. This invariably happened if she died childless. Marriage land appears most commonly to have been used by specific children of the donee. Though they could make use of it while remaining members of their father's lineage, it was more usual for the mother to send a particular child back to live with her own lineage and use this land. Here again, if the child were sent back when young, and adopted into its mother's family, he would participate jointly in the exploitation of common lands and the marriage portion would again revert to its source unless he made use of it. While no figures are available to substantiate the point, it appears that the majority of rights given as marriage gifts were little exercised, the land reverting naturally in the course of time to those who gave it.[2]

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[1] The information in this paragraph was supplied by informants in Rarotonga, who were familiar with the pre-Land Court (i.e. pre-1902) situation. (Early indigenous sources deal only cursorily with marriages.) Whether or not the details they outlined also applied pre-contact cannot be verified, though the informants considered that they did. While I did not locate any instances of marriage portions being loaned to custodians, Judge Morgan informs me that such instances have been brought to the notice of the Court.

[2] This view is supported by the comments of informants, and by the fact that when the Land Court investigated the title to all the lands on the island, very few portions were claimed as marriage lands.

By gift and permissive occupation

Certain rights in land were at times transferred by gift, but never all the rights in any parcel, for some rights invariably remained with the donors. Such gifts were always conditional and invariably implied a right of reversion to the donor if the donee died without issue. It may be better to avoid the word 'gift' altogether, for to the Western ear it implies the handing over of the fee simple of the land. Nevertheless, the term is frequently used in the literature, and is quite a convenient one provided it is remembered that only specific rights were given, and on specific conditions.

Gifts were given for a particular period of time - either the lifetime of the donee, or the period of his residence in the district, or for such period as he and his issue wished to occupy the land. If the time specified was a lifetime then the land reverted to its source on the death of the donee. If, on the other hand, the gift were given to the donee and his issue for so long as they might wish to use the land (and this was the widest form of gift given) then, of course, the donees' right would strengthen over time, for, provided it was used, they retained their right in perpetuity.[1] In the early stages a donee could hardly refer to the land as his own, but over time his rights would strengthen and eventually it would become

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[1] Such rights were given 'tuatau ua atu'. While this phrase is usually translated as 'for ever and ever', it may be more faithfully interpreted as 'from this time onward', implying 'as far as we can see'. The connotation is one of indefiniteness rather than irrevocability. Two unstated stipulations appear to have existed in all gifts. The first was that relations between the parties remained as at the time of transfer, and the second was that the right be exercised. Many examples exist wherein a right which had been granted while amicable relations existed between the parties, was withdrawn or challenged by the donors (or their issue) when relations between them deteriorated.

regarded as his land in the same way as if it had been acquired by any other means.

Gifts were given either as an acknowledgment of services rendered,[1] or to persons in distress such as castaways or fugitives. The latter category of rights may be termed 'permissive occupation'; the difference between gift and permissive occupation being that in the latter case greater qualifications were imposed and there was less commitment for the future.[2] Nevertheless, even the most tenuous right, once acquired, could be strengthened over time. Permissive occupation would never remain as such. It was a temporary right, an emergency arrangement to meet some unusual situation, and in time it would either die out or grow into some other kind of right. A feature of permissive occupation was that the donor party was entitled to partake of such of the produce of the lands as they thought fit, a custom which occasioned difficulty in the settlements formed by the Tahitian missionaries prior to the arrival of their English brethren.[3]

Descriptions of fugitives from war or justice fleeing from their lands and seeking refuge with relatives elsewhere are many. Some remained only temporarily, others remained throughout their lives; though some of their issue later returned; while others again remained permanently in their new location. Usually the person given the temporary right either died without further issue or married into the donor family, and in the latter case he would gain a use-right for

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1 Lands were frequently given for outstanding service in war.

2 This is, of course, a relative difference. Assuming an element of reciprocity to have existed in all exchanges, the underlying cause of the difference was no doubt that whereas in the former case the quid pro quo (in the form of some service rendered) was already met, in the latter case it was still to come.

3 Pitman, Journal 12.5.1827.

his lifetime and his children would inherit by blood.[1] Frequently the emergency passed over, the refugee left and the land reverted to those who had given it.

It was customary for persons holding land by permissive occupation to take to the donor some token of the produce of the land. This was not regarded so much as payment, as an acknowledgment that the occupier's right was only a subordinate one. Such a token gift would be taken to the head of the host family. However, contributions of food were taken to heads of groups for other reasons too: to help in group functions, as a sign of friendship or gratitude, or as gifts on occasions associated with the life crises of relatives. This custom of taking contributions of food and its implications in the matter of land rights was later to become a very important issue, though a somewhat confused and contentious one.

By adoption[2]

The adoption of children was a very common practice, and adults were adopted occasionally. Adoption could take place at any time from birth onwards, though it was frequently arranged before birth. In Western terminology adoption connotes a definite relationship which is established at a particular time and transfers specified rights and obligations from one party to another, but in Rarotonga the adoptive relationship varied considerably and could be established either at a particular time or over a period.

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1 No instance has been noted wherein a refugee married other than into the lineage in which he resided. Presumably if he did marry into another lineage it would be in his interests to shift his residence there.

2 An adoptee was known as a 'tamaiti angai' - literally a feeding child. In the literature the term 'tama 'u'a' was applied to adoptees who were not related by blood, but there was some inconsistency in the use of this term by informants.

Adoptees from outside the lineage were almost invariably secondary members of it (i.e. the children of contingent members) and automatically assumed the status of primary members once adopted. Both the father and the brothers of the adoptee's mother were primary right-holders there and could provide land for the child. This would not be possible if the adoption took place from the family of origin to a contingent member living in another lineage, for the adopting parent in such a case had only permissive status in the lineage of residence and had no power to make provision for land rights of others. Persons with no recognized connection by descent were sometimes adopted, though this was much less common than the adoption of kin,[1] and seems to have been practised exclusively by persons of rank.[2]

While a person was adopted by a particular household and lineage, he was also adopted by a particular individual (not by a husband and wife jointly).[3] The reason for this was presumably that although use-rights were exercised in common with the other members of the household, proprietary rights were shared with other members of the extended family and were differentiated individually according to status within the family group.

Ideally, an adoptee's rights were specified at the time of adoption, but the ideal was not always achieved in

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1 With a population of about 7,000 people living on a small island and only very limited contact with other islands, every person was no doubt related to every other. The significant factor in adoption would no doubt be whether or not the relationship between the parties was recognized.

2 This supposed tendency may possibly be due to the lack of evidence about such adoptions by commoners. However, as the adoption of non-relatives appears generally to have been motivated by political considerations it is unlikely that commoners were involved to the same extent as chiefs, if at all.

3 This is still almost invariably the case today.

practice.[1] It was customary to call together all those persons whose land rights would be affected by the adoption and to obtain their consent. This was done by making the announcement at a feast prepared for the occasion, for it was accepted custom that any person who had partaken of a feast without raising any objection to the arrangements announced there was considered to have concurred in those arrangements.[2]

Frequently one or two special portions of land were set aside for the adoptee and his issue for so long as they lived and used the land. The adoptee would be brought up by the family which had adopted him, but once he reached maturity he could either remain in that household or set up a new household on the land allotted to him. If he did not exercise his rights in the special plot or plots allotted to him (either by he himself or some of his issue using them) then they reverted to the source from which they came. The right of an adoptee to will land given to him by his foster-family was limited to his own issue. Should he wish to devise it to others, the consent of the donors was required.

Even when a particular portion of land was set aside and used by the adoptee, he could not remain exclusively on that land, nor could he obtain all his requirements from it. The mountain-sides, the taro swamps, the rich alluvial flats, the rocky foreshore, and the lagoon each yielded products which were not available from the other. Most commonly an adoptee was given a piece of alluvial gardening land, and some taro swamp land but this did not satisfy all his needs

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1 'If native custom is properly carried out the lands to be awarded to an adopted child are made known at the time of adoption.... Unfortunately this procedure was not always followed....' - Judge Morgan, MB 22:339 NLC.

2 Moss, JPS 3:23. This is still generally the case today.

and his other requirements were obtained from lands of the lineage which he had joined. His relationship with them was one of constant interaction, and his land rights cannot be regarded in isolation.

Once adopted into another family or lineage a person could only exercise contingent rights in the lands of his lineage of origin. But in many cases the process of adoption was not so clearly defined, especially if the households were close together so that children could spend some of their time with their born parents and some with their maternal uncles and grandparents, and could exercise similar primary rights in both households. If, in a particular case, a child moved between his mother's household and that of his maternal grandparents, and in his adolescence tended to accept the latter as his more usual abode, he would exercise his land rights there. But in the event of friction his right in the adoptive household might be disputed, and if he were unpopular for some reason the household into which he had been born may not want to take him back. While this type of case appears to have been the exception (for most children would be welcome in either group) it probably did occur occasionally.[1]

On the other hand, and this appears to have occurred much more frequently, an adoptee sometimes succeeded in holding primary rights in both lineages, for in the same way that a family could set aside land as a marriage portion for a woman who married out, so also could they set aside land for a child who was adopted out. As with the marriage gift, such land was more often used by one of the issue of the

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[1] No pre-contact example of this type has been located but a post-contact example wherein neither family were prepared to make adequate provision of lands for the child of a deceased adoptee is given in MB 22:318-20 NLC.

donee than by the donee himself. Even apart from lands specifically reserved for him, the adoptee normally retained contingent rights in the lands of his natal lineage, and thus if his natal family was at any stage left without direct male issue, or any other atypical circumstance arose, he could reassert primary rights there. This marginal status of adoptees was conducive to dispute, and in fact rights acquired by adoption have always been a matter of contention.[1]

There is no information available with regard to sex preferences in adoption, though accounts of adoptions by ranked families usually refer to male children.

The pattern of acquisition

No quantitative data is available from the pre-contact era to indicate the relative incidence of each of the various ways of acquiring land rights, but in one of the best documented of the early land cases witnesses incidentally name those persons who actually planted the block of land in question during the nineteenth century. Of a total of about 60 persons mentioned it has been possible to determine in 36 instances the persons from whom each acquired his right to plant. Of the 36, 19 acquired their rights from their fathers, 1 from his father by adoption, 5 from their mothers, 2 from classificatory elder brothers, 4 from their wives, 2 from wives of their brothers, and 3 by permissive occupation from persons apparently unrelated.[2]

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1 The number of children adopted today is reducing year by year and the land rights of the respective parties are now clearly specified. Nevertheless, the Registrar of the Land Court (Mr L.H. Trenn) estimates that nearly ninety per cent of the land disputes which come before his notice concern rights acquired by adoption or by permissive occupation. There is evidence to indicate that this is no new phenomenon, for indigenous histories contain numerous instances of disputes over the rights of adoptees.

2 Avaavaroa case - MB 1:107-39 NLC. It will be noted that the above persons were users and did not necessarily have proprietary rights in the land.

From evidence given in the Ngati Te Ora case[1] data were compiled on all persons mentioned as actually owning and occupying (i.e. the primary right-holders in) one particular block of land prior to the advent of the Land Court. The data does not purport to be exhaustive, as almost all the persons mentioned were household heads, and those living within their households were not named though they were included by implication. A total of ten names was mentioned, and their relationship to the Te Ora lineage is as follows. Three were persons who held (at some stage) the title of Te Ora Rangatira, one was a brother of the rangatira and another a classificatory brother, three were heads of kiato within the lineage, one was a member of one of these kiato, one was a woman whose father married uxorilocally and who accordingly claimed through her maternal grandfather who was a kiato of the lineage. In addition to the above holders of both proprietary and usufructuary rights there were two persons who were granted permission to occupy by a kiato who travelled overseas, one who was given permission to occupy by the then Te Ora Rangatira (the latter a man who held two rangatira titles concurrently, and the person to whom he gave the permission was a kiato under him in his capacity as holder of the other title), and one was a son-in-law of the preceding. Thirteen of the fourteen persons named were males.

The ideal claim to land began with discovery or conquest, and was then traced by a process of inheritance in the male line, supported by continuous occupation. While the ideal of patrilineal inheritance was achieved in the majority of cases, it is apparent from the examples quoted above that the alternative provisions for acquisition of

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[1] See appendix B.

rights through females or by adoption, marriage or permissive occupation were not infrequently resorted to. While it was quite legitimate for a person to acquire rights through one of these alternative channels provided by custom, there was a constant tendency to assimilate to the ideal. This was expressed in two ways. Firstly, over the course of time, the actual status of the persons concerned could be rationalized into the ideal status, and an examination of genealogies shows this to have been general, for the early portions of genealogies almost invariably claim that the title passed continuously from the father to the eldest born son, though this cannot so regularly have been the case in fact. Despite the widespread incidence of adoption, therefore, it is unusual to find any persons claiming by an adoptive link more than two generations back; and despite the occurrence of claims from females, claimants rarely acknowledge that their claim derived through a female more than two or three generations back (either female links are later reputed to have been males, or the female is omitted altogether and the claim is made directly from the maternal grandfather); and while perhaps fifteen per cent of all births were illegitimate this fact is mentioned in only a small proportion of current instances and rarely indeed in earlier generations. Secondly, persons who had acquired their rights by other than the ideal means appear to have been secure only while observing due humility or while their 'patron' was alive. After that, if their actual status had not been rationalized into the ideal pattern a process of ejection was set in motion and the 'intruder' was evicted on some convenient pretext.[1]

The loss of rights to land

A person could be deprived of land rights as punishment, but this deprivation was usually a concomitant of expulsion

[1] E.g. MB 4:277 NLC.

from the social group.[1] Responsibility for crime lay not only with the criminal but also with his family - a custom which shocked the early English missionaries.[2] At times offenders were not banished but certain portions of their lands were taken away from them and either given to the injured party, or, on the showing of due humility by the offender, later restored to him. The latter course of action really amounted to a threat that unless the offender acted with appropriate humility he would be deprived of his lands. Alternatively again, the lands were sometimes laid waste without depriving the offender of his rights to them.

With the possible exception of rights lost by banishment or conquest, no right was extinguished in one fell swoop.[3] The normal process of loss was by a series of steps taking place over two or more generations. The most common first step was to leave the group of which one was a primary member to join another group at marriage, whereupon one acquired contingent status in relation to the original group and its lands. Unless primary status was resumed, the children of the contingent member acquired secondary status in relation to that group, and unless one or more of them or of their children assumed primary status during their lifetime, then so far as land rights were concerned the connection was 'cold'. Distant secondary members could,

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1 The actual driving out of the family was known as 'akataa' and a person who had been so driven out was accordingly known as a 'tangata akataa'. The act of seizing his possessions was known as 'aru', and that of devastating his crops and destroying his house was called 'akatanea'. This system of plunder was similar to the New Zealand Maori custom of muru.

2 E.g. Pitman, who graphically describes the banishment and confiscation of lands of a set of brothers for a crime committed by one of them. - Journal 14.8.1829.

3 Even in the case of conquest or banishment rights were often not entirely lost, for they may be gratuitously restored, or action may be taken to repossess them. Likewise in the case of gifts, the donor retained residual rights.

it is true, be accepted as primary members if the need arose, and they were on some occasions. Such instances, however, were unusual, and were invariably associated with particular atypical circumstances. They thus cannot be regarded as the norm.

The continued recognition of rights to any particular portion of land as belonging to a particular social group was dependent upon occupation by members of that group or by persons to whom they had delegated some of their rights. Just what constituted 'occupation' in the case of little-used lands is difficult to define, but residence within the tapere concerned appears to have been one of the pre-requisites. If there was inadequate land, groups could probably not maintain for long their rights to land which they did not actively use.[1] Nevertheless, the challenge to the survival of a right came only when a counter-claimant began to exercise rights by planting, building or harvesting on the land.

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[1] Even if a claim to unused land was impregnable to an aggressor it could nevertheless be vulnerable to the humble request of a friend and potential supporter.

Chapter 6

THE UTILIZATION AND ROLE OF LAND IN RAROTONGA

The economic exploitation of land

Rarotonga is a volcanic island about twenty-six square miles in area; its high mountainous core being dissected into a series of valleys and ridges which radiate out across the coastal lowlands to the lagoon which encompasses the island. The three major soil types follow the pattern of physical configuration:[1] the relatively infertile coastal flats giving way to a narrow low-lying belt of very fertile soil lying between the coastal flats and the mountains and often extending up the valley floors for half a mile or more, while behind it lies the deeply dissected mountainous interior occupying two-thirds of the island's total area.

Corresponding to these three soil zones were three zones of plant life, but those of the coastal fringe and the mountainous interior supplied relatively few of the needs of the people, the bulk of the food and other subsistence requirements (apart from marine products) being obtained from the middle zone, the whole of which had been cropped at one time or another, and was covered entirely with either second growth or cultivations.[2] It was in this zone that the dwellings of the people were situated.

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1 For full details of soil types see Fox and Grange, Soils... 7-13. For sketch map of Rarotonga see page 14 ante.

2 Cheeseman, TLS 6:265-8. Details of the flora of the island are given by Cheeseman, TLS; Wilder, Flora of Rarotonga; Gill, Jottings... part III; Buzacott, Mission Life... 240; and Pitman to LMS 29.11.1827 SSL.

Most of the food supply was produced by agriculture, the principal crops being taro (colocasia esculenta), breadfruit, bananas, kumara (ipomea batatas), yams, arrowroot, kape (alocasia macrorhiza), coconuts and ti (cordyline terminalis). Kava (piper methysticum) was grown for use as a beverage.[1] Fowls and pigs were domesticated and kept in considerable numbers,[2] but pigs were eaten only on festive occasions. Rats and lizards were prevalent, but were not eaten in Rarotonga (though rats were a common item of diet on the neighbouring island of Mangaia). Hunting was restricted to the snaring of birds and wildfowl.

Fishing was carried out in the streams, in the lagoon, and in the open sea, and provided an important part of the diet. Eels were caught in the taro swamps and crabs were taken on the beaches at certain seasons. Fish weirs, made of coral boulders, were constructed in the lagoon. Watercress was gathered from the stream-beds and edible seaweeds were collected in the lagoon.

Other foods were gathered but not generally cultivated, the most important being plantains, chestnuts, roots and berries. In periods of famine after hurricanes or destructive wars, candlenuts, roots, pandanus drupes and even banana stalks were eaten. The main green foods consumed were taro leaves and the leaves of the poroporo shrub (solanum oleraceum).

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1 Buck states that mataiapo particularly grew it just outside their homes, but there is no indication that it had the close link with status and ceremonial that obtained in Western Polynesia. - Arts and Crafts... 18-20.

2 Early mission accounts refer to a scarcity of pigs, and while this was in fact true for the Avarua and Arorangi districts at the time of arrival of the first missionaries, it was due to the recent defeat of those districts at the hands of Takitumu when their pigs were killed and their crops destroyed. Captain Chase of the 'Falcon', who visited the island in March 1824, reported that there were pigs in abundance - New Bedford Mercury 15.4.1825; and Pitman notes that there were large numbers of pigs in the Takitumu district. - Pitman, Journal 5.12.1827.

Breadfruit, taro, bananas, and plantains were the most important crops. The breadfruit was seasonal, producing but one crop annually, in summer, which was the season of plenty.[1] Most of the other agricultural crops could be harvested throughout the year, and there was accordingly relatively little food preservation; the only recorded types being breadfruit paste stored in pits, chestnuts preserved in the same manner, and dry coconuts stacked in houses built for the purpose. Bananas were buried in the ground, but this was for the purpose of ripening the fruit rather than preserving it.[2] Foods were stored against the time of breadfruit shortage (the winter months) and also as emergency supplies in the event of large numbers of visitors for occasions like weddings and funerals or in the event of hurricanes or drought.[3]

Raw materials for every need were, with the exception of a few obtained from the lagoon and sea, derived from the land. Most garments were made from the beaten inner bark of the paper mulberry (broussonetia papyrifera) and the breadfruit, while a coarser cloth was prepared from the bark of the banyan tree (ficus prolixa). The hibiscus (hibiscus tiliaceus) which grew in profusion in uncultivated areas, furnished cordage from its bark, platters from its leaves and rafters from its branches. Mats and other plaited-ware were produced from the leaves of the pandanus (some varieties of which were cultivated) and the coconut. While

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1 The two seasons recognized were the Kuru (literally 'breadfruit' referring to the season of plenty) and Paroro (scarcity).

2 Bananas were (and still are) preserved in some of the Cook Islands. - Diary of Andrew Bloxam 86. No reference to this having been done on Rarotonga has been located.

3 'A man who has two or three pits of chestnuts, as many of mai or sour breadfruit paste, with a number of old cocoa-nuts, is well provided for against the season of scarcity.' - Gill, Jottings... 196.

pandanus thatch was used for god-houses and the houses of chiefs, only coconut thatch was used by commoners.

Timber for house-building and the manufacture of canoes and other artifacts was obtained from cultivated trees such as the coconut and breadfruit, as well as from forest trees. A host of articles of lesser importance was obtained from the land - candlenuts for torches and dyes, barringtonia for fish poisons, pua (fagraea bertercana) for perfumes, vines for the making of fishtraps and a variety of products for medicinal purposes. None of these products were cultivated, supplies being collected from self-propagated trees. Owing to the random growth of such trees, a considerable area of land was necessary to ensure an adequate supply of all products.[1]

There being no trading on the island (or between this and any other island) there was no incentive for production beyond the quantities necessary for subsistence, for gifts and tribute, and for the entertaining of guests. The risk of hurricanes, to which most of the crops were vulnerable, made food preservation prudent, but known techniques of preservation were limited to the few products already mentioned, and nothing could be done to protect most of the crops from hurricane damage.

Land was not regarded as a capital good and there was no conception of the sale of land or its produce. Lineages with surplus land could nevertheless exploit it to their own advantage, in order to swell their ranks and prestige, by making land available to distant relatives and refugees whose subordinate status made them vulnerable to larger than usual contributions of tribute.

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[1] With one unimportant exception there are no gregarious trees native to Rarotonga. - Wilder, Flora... 5.

The Rarotongan people were aware of the different soil types and their potentialities for various crops. Taro was planted in the alluvial soils of the stream-beds and swampy depressions of the old lagoon bed. Most varieties were grown in swamps (both natural and artificial) and necessitated the use of a simple irrigation system of dams and water channels to enable the crop to be grown across the valley floor and not just in the stream-beds themselves.[1]

As Buck noted, a good deal of supervision was required to ensure that the various families, having terraces at various levels, got their fair share of water, especially in dry periods. Such a system required organization above the household level (for various households used a common source of water) and would probably have been the responsibility of the head of the major lineage.[2]

The rich soil and the warm moist climate made growth rapid and easy. Consequently there were not the refinements in agricultural technique which are often found in areas where the pressure of the external environment necessitates more careful husbandry. The only agricultural implements were the ironwood digging stick (ko), and the planting stick.[3] Unlike the digging stick, which is of uniform thickness, the planting stick has a thick rounded end and was used to drive holes in the soft earth to plant taro. It was also known as the 'ko'.

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1 This technique of cultivation, which was so prevalent at the time of first European contact, is still practised today, though on a smaller scale.

2 Unfortunately no indigenous records illustrate this point, but Buck maintains that '...the chief who owned the land had command over the irrigation channel and the distribution of the water'. He quotes an example where Kainuku Ariki had cut off the supply of water to one of his 'tenants' owing to the latter's failure to provide certain tribute. - Arts and Crafts... 250. Presumably this action was taken by Kainuku as head of his own lineage and not as an ariki of Takitumu.

3 These are more fully described in Buck, Arts and Crafts... 248-9.

It was probably due to the limited range of implements and to the fact that the staple vegetable (taro) required very little clearing and a minimum of other cultivation that the bulk of the food supply was obtained from this source, as well as from breadfruit, bananas and plantains, which did not require cultivation at all. Garden crops were grown, but they merely supplemented the above-mentioned staples. Shifting cultivation was practised, but it only applied to the less important crops like kumara, arrowroot, yams and giant taro which were grown on the alluvial flats and the lower slopes of the hills. Swamp taro, bananas and the tree crops did not require the rotation of soil or crop.

Planting was carried out according to the phases of the moon, each night being clearly categorized as propitious or otherwise for growth of the young plant.[1] The role of the priests in gardening lore, and the details of the system of gardening magic are no longer known.

Ridges and other natural features were used almost invariably to demarcate the hilly parts of one tapere from another. The flat coastal portion was usually marked by rows of chestnut or banyan trees.[2] In some cases rock walls were constructed across the flat land to serve as tapere boundaries.[3] Within the tapere the stream which ran down

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1 This custom is still practised by some people on the island. While some nights were considered propitious for planting in general, others were considered appropriate for specific crops only.

2 Chestnut trees are still commonly used as boundary marks, and due to the age which these trees are said to attain, many of them may have been growing since the pre-contact era. Relatively few banyan trees are left today as most have been destroyed to make room for agriculture, since each tree in its natural state may cover an acre or more of ground.

3 It is not known whether these were an indigenous feature (as they were in Samoa) though there is no doubt that the majority of them at least were built at the instigation of the early missionaries in the first half of the last century.

the middle of the valley very frequently formed a boundary, with holdings extending from the stream to the top of the adjacent ridge.[1] Natural features, rocks and trees were used to indicate important points, the boundary itself being an imaginary straight line running from one landmark to the next.[2]

Boundaries between contiguous taro plots were marked by stone retaining walls which were necessitated by the irrigation system. Alternatively earth-works (motu) were constructed to divided the plots, and bananas or breadfruit were planted on them. Trees, or stones, or a row of banana plants, are often used today to demarcate contiguous plots belonging to members of the same minor lineage and it is claimed that this is an old-established system. All lands, including home sites, were identified by a particular name and each subdivision within a block was individually named. It was the prerogative of the owning group to give or to change the name. A meaning was always ascribed to the name and it is not uncommon for disputants in Land Court cases to tender knowledge of the origin of the name as evidence of ownership. Likewise, the fact that members of a particular descent group had been buried on certain lands, or had marae there, was not infrequently used as evidence of ownership of the surrounding lands.[3]

Confirmation of the transfer of any land was shown by the preparation of a feast to which all interested parties were invited. Any person who partook of the feast was

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1 A map showing current ownership of land in Rarotonga illustrates this point clearly. See page 68.

2 These features are clearly seen in any of the early surveying handbooks.

3 Though examples do exist of descent groups which had been conquered and had forfeited the rights to most of their lands being permitted to continue to use the burial grounds and marae.

considered to have concurred in the arrangements to which the feast gave the stamp of confirmation.

The role of land in social relations

As discussed earlier, each tapere of land was associated with a particular descent group which, conquests apart, traced its connection with that land back through generations of illustrious ancestors to founder chiefs who were held in such veneration that they had assumed some of the qualities of deities. The spiritual and temporal prosperity of the group was closely related to the sanctity of the local marae, the presence in the locality of the buried remains of countless forbears, and the fertility of the soil from which the occupants of the tapere derived their sustenance.

The land and the society were intricately interwoven. No rank title and no descent group was conceivable apart from the lands associated with it, and no material good could be acquired other than from the land or the sea. The recruitment of additional members and the provision of ceremonial and hospitality so vital to the continued status of the group were dependent on adequate resources of land and labour. It is accordingly understandable that land acquired a considerable prestige value and that a man was 'great according to the number of his kaingas or farms'.[1]

The necessity to defend the land from those who would acquire it by aggression or encroachment necessitated joint action by those with interests in common, and this no doubt constituted a major unifying force in the society, acting as a brake on any tendency for the individual to pursue his own interests to the detriment of the right-holding group as a whole.

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1 Williams, A Narrative... 215.

The exercise of land rights carried with it certain obligations to other members of the groups which held rights in the land concerned. There were obligations which functioned to maintain and reinforce social relations, such as the necessity to supply produce for marriages, funerals and other occasions of social interaction, and those requiring mutual assistance and the provision of land for the use of particular kin on appropriate occasions.

There were also obligations which functioned to reinforce the political organization. Members of the lower social orders rendered tribute to members of the higher strata within the same segment of the political structure. Two particular services which every man was expected to render were known as aratiroa (the provision of food and services for distinguished visitors) and arevananga (the construction of public buildings including the high chief's house). In addition there were various offerings, largely of a religious nature, which were known by the generic name of atinga. While particular forms of atinga were provided for particular ceremonial occasions, atinga was also payable to the head of the appropriate landowning group by persons who planted under conditions of permissive occupation.

It is impossible to determine exactly the degree to which tribute was an obligation deriving from the holding of rights in land, though there was certainly a relationship between the two.[1] No single instance has been noted

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[1] In reply to a question about the tenure of land asked by Sir W.J. Steward, Pa Ariki said:

'This is the custom from our fathers: The Ariki...has his land. Now, he puts that land into the hands of his people. The Mataiapo owns his land. He also has that land in the hands of his people. Following the chief [mataiapo] there is the Komono, and he also holds land, and is linked with the chief - is under the chief. The land is in his hands and the hands of his people. The word about the people on his land is with the chief to whom he adheres. Now, when the chief has any work in hand he sends his messengers to

in which a person rendered atinga except where the recipient held some superior rights in land in which the donor held subordinate rights.[1] Furthermore, the failure to render tribute was punishable by banishment and the forfeiture of land rights.[2]

Non-resident members of a lineage were, it is true, entitled to food from the lands of that lineage when passing over them, or when visiting the primary group. But the right to take fruits for refreshment when travelling, and the obligation to provide food for visitors or passers-by was universal and applied to all persons, whether relatives or otherwise. Such transient acts of use thus had no necessary correlation with rights of ownership.

The status of chiefs was reinforced by making certain products their exclusive prerogative. Turtle was considered sacred and could be eaten only by men of high rank,[3] as also could the head of a pig.[4] Sharks and certain other fish were also rendered to the chiefs.[5] The records are not clear

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1 (continued from previous page)
the Komono and to the Kiato under him. Then they do what the chief requires; they bring whatever he has instructed them to bring. Concerning the Arikis, they have under them Rangatiras, and these Rangatiras are usually the younger members and branches of the kingly family. And there is their subdivision of land in their own hands. But the power over these Rangatiras is with the Ariki. When the Ariki has work in hand he sends word to these Rangatiras of his, and they come at the summons of the Ariki, and do what is to be done, when anything is required in the way of food, or so on. That is our system on the land here.' - NZPP A3B 1903:9.

1 Even in the case of Makea Ariki rendering atinga to Pa Ariki and Kainuku Ariki, this was not done in Makea's capacity as high chief of Avarua, but as the holder of a portion of land in the Takitumu district. - AMB 2:58 NLC.

2 E.g. AMB 1:17.

3 Gill, Jottings... 221.

4 Buzacott, Mission Life... 110. This custom is still observed to a limited degree today.

5 Smith lists shark, urua and punupunu, and states that these fish were still reserved for the high chiefs in 1897. - JPS 12:220.

as to exactly which grades of chiefs were entitled to enjoy these privileges, though Buck states that they were formally presented to the ariki of the district, who could give shares to his subordinate chiefs and return a share to the fishermen.[1] While traditional accounts do not state the principles explicitly, confirmatory evidence is given by frequent references such as the following: 'Uenuku [a high chief], and his wife begat Toroa. He was the heir to the ariki title, and he had all the great fish and all the things that are sacred to an ariki.'[2]

An offering of first fruits took place in December each year, on the rising of the Pleiades and a variety of other ceremonies were held on particular occasions throughout the year. All participants were expected to contribute foodstuffs for the festivities, and while the pattern of contribution and distribution differed for various ceremonies, it was usual to leave a portion on the marae for the gods, to render a share to the chiefs, and to distribute the balance to the people on a household basis.[3]

Within the residential core of the descent group there was a sexual division of labour for certain tasks, though the sexes co-operated in others. The construction of houses, the heavier agricultural work and pelagic fishing were the province of men. Women assisted with planting and harvesting, and weeding was considered to be primarily women's work. Some early reports indicate that cooking was the responsibility of the men.[4] However, informants were unanimous in saying that this applied only to bulk cooking in

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1 Buck, Arts and Crafts... 209.

2 Terei, Tuatua Taito 24.

3 Taraare, JPS 30:137-41.

4 E.g. Gill, Life... 64.

earth ovens for feasts.[1] In-shore and lagoon fishing were shared by men and women, though the collection of shellfish and crustaceans was normally considered to be women's work. The preparation of bark-cloth, the plaiting of mats and baskets, and the collection of candlenuts for lighting were all women's occupations.

While the household was the elementary unit of production and consumption, nearby related households were called on to assist with heavy tasks like clearing bush or constructing taro beds, and whole lineages must have co-operated in such tasks as carrying large tree-trunks, some of which Maretu says required fifty to one hundred men at a time.[2] The organizing (i.e. the assisted) group was obliged to provide food for the helpers.[3]

Chiefs were not exempt from agricultural labour, and were expected in this and other work to lead by active participation.[4] While individuals and families undertook their own small-scale fishing activities, any large-scale operations were directed by fishing experts.

Access to land or crops could be controlled or denied by the use of the ra'ui, or customary prohibition, by the appropriate chief.[5] The ra'ui was embodied in a sign - often a coconut leaf tied around a tree on the path leading

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1 This form of cooking, known as 'ta'u', is still today done by men when pigs and large quantities of food require to be cooked for feasts.

2 Maretu, MS 50.

3 Co-operating groups of this sort are little used in agriculture today, and the last occasion my informants remember when pere vaere (a large-scale co-operative group to clear land alternately for each of the members) operated was in the 1940s.

4 'Chiefs and all take their portion of work. If any work public or domestic is going on the great and under chiefs are all at their post.' - Pitman, Journal 12.10.1830.

5 It is still used occasionally on Rarotonga, and quite frequently on some of the outer islands.

into the prohibited area - and was invested with supernatural power (tapu). The breach of a ra'ui was punishable with both secular and supernatural sanctions. It was used mainly to preserve supplies of a particular crop, though it could also be used to protect lagoon fish in order that their numbers might multiply or even to prohibit the use of certain paths.[1] These prohibitions were generally applied when it was intended that the supplies thus preserved be allowed to accumulate for consumption at a forthcoming feast. The same technique was used at times to stop thieving, for the thief was exposed to both temporal and supernatural sanctions by entering lands which were under ra'ui.

The settling of disputes in relation to land rights was a constant problem. Even given the system of priorities for the allocation of rights, and of conditions for their retention and loss, rival claimants did not always agree on the relative merits of their claims, and a tribunal or other machinery was necessary to give and enforce judgement in the event of dispute. This aspect of the tenure system was but little developed, and was probably its greatest weakness, being detrimental both to social stability and volume of production.

Differences could be handled by negotiation between the parties, by reference to a higher authority, or by fighting. As direct trial of strength was always possible, negotiations must have been made with an eye to the probable outcome if warfare were finally resorted to.

While there are many examples of settlement by negotiation after the arrival of the English missionaries, there are very few before but this may simply be due to the fact that if negotiations were successful, there would be nothing

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[1] E.g. Taraare, JPS 30:141; Terei, Tuatua Taito 30.

of interest to record. After the arrival of the mission there are many instances of disputes being referred to the ariki for settlement, but it is assumed that this was considerably less common before the arrival of the mission. It is probable that the highest effective level for settling land disputes by arbitration was usually that of the head of the major lineage. Gill considered that the settling of disputes within his lineage was one of the major functions of a chief in the pre-contact period,[1] but the extent of warfare on the island shows that settlement by negotiation or reference to a higher authority was not always effective.

Those who lacked the physical resources to take direct action could resort to sorcery and invoke supernatural agencies to punish offenders. The mission so effectively destroyed the priesthood and crushed the indigenous magico-religious structure that little knowledge of these processes remains. All that can be said is that sorcery was practised and that a class of 'priests' specialized in the exercise of this craft.[2]

The state of land rights in 1823

The principles of land tenure described in the foregoing chapters should be regarded as a body of common understandings which, other things being equal, guided behaviour. But variations in physical strength, power of personalities, number of dependants and other factors resulted in other things not always being equal - and the application of the principles was modified accordingly. Ideally, the overlapping claims acquired through the various channels were reconciled by decisions issued by the chief or chiefs concerned;

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1 Gill, AAAS 334.

2 Sickness was sometimes attributed to sorcery in retaliation for 'land grabbing'. - Hutchen to LMS 16.2.1891 SSR.

but no decisions were irrevocable and not everyone was necessarily prepared to accept the arrangements made by the titleholders.

The tenure system was one in which individuals sought their own maximum advantage in the face of two inhibiting factors. The first was the limitation of process, due to advantage having to be sought through the channels of accepted custom, and the second was the necessity to allow for the claims of other right-holders (in its extreme form the ability to resist aggression) limiting the extent to which that advantage could be pursued.

In view of the propensity to expand one's rights, coupled with the flexibility of means of acquiring and losing rights, it is not surprising that at the time of first European contact every inch of land on the island was claimed by one party or another - and sometimes by more than one. Theft and damage to crops in retaliation for other wrongs were very prevalent and acted as a strong disincentive to the expansion of plantings by those with adequate land. Furthermore, with a population of 7,000[1] living off the land (only 3,700 acres of which is regarded as suitable for agriculture)[2]; with the whole of the Avarua district laid waste in war[3]; with considerable areas of land between the districts lying idle in dispute,[4] one cannot doubt Maretu's statement that of the remainder 'scarcely one piece remained unoccupied'.[5]

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1 For fuller details of population at this time see page 45.

2 Fox and Grange, Soils... 40. They consider a further 1,530 acres to be usable for tree crops though not generally suitable for agriculture.

3 Maretu, MS 19.

4 Pitman to LMS 17.12.1834 SSJ.

5 Maretu, MS 33. He does not suggest that it was all planted, but merely that it was in the recognized occupation of one or other family.

Disputes as to ownership and use were frequent, though historical records show them to have been much more prevalent between lineages than within them.[1] The first European missionaries found that land disputes were constant and constituted the most contentious issue that they had to deal with during their early years. Pitman recorded after a meeting with some of the chiefs that: 'Formerly they used to find some pretext to seize one another's kaingas or land consequently nothing but quarrels and wars were known among them. The principal difficulty appears to be whether the present holder of the land shall keep what he has or restore it to the person from whom it was taken. If the latter be adopted, it is likely to be attended with many unpleasant circumstances. The former at present appears to be the most likely for the continuation of peace.'[2]

Williams described the situation by saying: 'Another difficulty was produced by what they call kai kainga, or land-eating, which is getting unjust possession of each other's lands; and these, once obtained, are held with the greatest possible tenacity; for land is exceedingly valuable in Rarotonga, and on no subject were their contentions more frequent and fierce. On investigating this last practice, we found it to be a species of oppression in which so many were involved, and also a point on which the feelings of all were so exquisitively sensitive, that to moot it would be to endanger the peace of the island. We therefore thought it most advisable to recommend the chiefs to allow it to remain for the present in abeyance.'[3]

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1 This reflects the fact that the machinery for settlement of disputes within tapere was relatively efficient, whereas that above the tapere level was not.

2 Pitman, Journal 28.7.1827.

3 Williams, A Narrative... 139.

Land disputes were most commonly encountered in cases where the primary holders of the rights concerned had died without surviving issue in the primary group, and where more than one secondary claimant wished to acquire the rights in question. While recorded pre-contact disputes most frequently involved titleholders of different lineages who claimed the same lands by different criteria, it is apparent that problems sometimes arose between chiefs and their subordinates within the same lineage group, for in 1833, after Buzacott had preached with fervour on the impending hell fire for unrepentant sinners, one of the ariki was induced to make a public confession of his sins. He admitted having 'robbed some of the lesser chiefs of their lands, and he had placed some of his favourites as tenants upon them'.[1] This he had done prior to the arrival of the gospel, in all probability allotting extra portions to those who had supported him in his recent battle to retain supremacy over his district, and taking away from those who had not.

Such was the state of land rights in 1823. It was not due to any lack of suitable principles by which to determine the allocation, retention and transfer of land rights, but rather to the lack of any adequate machinery to give and enforce a binding decision in the event of the disputed application of particular principles in particular cases of inter-lineage conflict. Despite the chronic state of unresolved conflict which existed in respect of many portions of land, it was not of such dimensions as to preclude the planting of food crops, the construction of houses, or the continuance of the usual ebb and flow of life. Land disputes had, in fact, become an incorporated part of the pattern of life.

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[1] He thereupon made arrangements for the restoration of the lands to the former owners. - Buzacott, Mission Life... 146.

P A R T T W O

THE IMPACT OF EUROPEAN CULTURE ON LAND TENURE, 1823-98

Chapter 7

CHANGES IN THE DISTRIBUTION OF LAND AND LAND RIGHTS

New patterns of settlement

The institutional framework within which the system of land tenure described in the first part of this study was evolved, appears to have retained the same basic features for at least a thousand years. Despite modifications to suit particular cultural and environmental circumstances, a comparison with the cultures of the New Zealand Maoris, the Tahitians and the Hawaiians shows a persistence throughout of fundamental forms and themes. It is probable, in fact, that the first radical change in the culture of the people of the Cook Islands since their initial settlement was that wrought by the advent of Europeans in the nineteenth century.

In most parts of Polynesia the first agents of culture change were traders, but as the Cook Islands were off the beaten trade routes, lacked harbour facilities, and produced nothing that was not more readily available in Tahiti or Tonga, it was the missionaries who there afforded the most important early link with European culture.[1] The

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[1] The missionaries were preceded by explorers such as Cook, Byron and Bellinghausen; by traders like Goodenough, Hort and Lamont; and by spasmodic calls for supplies by whalers and other vessels. These random visits to particular islands were decades apart, and as Beaglehole has said, '...the social change initiated by these brief visits was very slight...it was left to the missionaries therefore to be the agents of social change...'. - Social Change in the South Pacific 14.

earliest bearers of the foreign culture were not themselves Europeans, but Tahitians who had been trained as missionaries by the London Missionary Society in Tahiti. Between 1821 and 1824 they were posted to all the inhabited islands of the Southern Group with the exception of Manuae. When mission expansion to the atolls of the Northern Group was begun in 1849 the pioneering work was undertaken by Rarotongan evangelists. No European missionaries were based in the group until 1827, and though they thenceforth controlled and coordinated the work of the native pastors, they resided permanently on only three of the islands.[1]

Confronted with the difficulties of teaching diverse and scattered groups, the evangelists persuaded their followers to reside near the mission headquarters on each island. This involved a change in both the place and the pattern of residence. Previously all people had lived in nucleated hamlets in their own tapere, or in the case of the atolls, on their own motu,[2] but with the acceptance of Christianity the inhabitants of each island were attracted into a single settlement.[3]

The sites for the mission stations, and consequently for the new settlements, were chosen in consultation with the leading pro-Christian chiefs, and were accordingly located within the tapere of the most powerful of them.

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1 Rarotonga from 1827, Aitutaki from 1839 and Mangaia from 1845.

2 An islet in an atoll.

3 Rakahanga may be regarded as an exception, as all four lineages there had always lived in a single village. This was no doubt due to their small numbers and the fact that they all sprang from the same two ancestors. On Pukapuka, the people had since long before European contact lived in three distinct villages on one motu, but there were only two other motu on the atoll and neither was suitable for permanent habitation. Having regard to the small size of the populations of these two islands, and the circumstances of their origins, it may be claimed that they were not exceptional, for the settlements were not unlike the hamlets of the other islands.

These unitary settlements lasted for varying periods, some for several decades, but after a time they almost invariably split along lines of pre-contact allegiance. Following each division, however, the village pattern was retained (at least as the dominant pattern) and the people comprising the splinter group merely returned to the tapere of the highest chief recognized by them, and set up a new village there.

The collection of all the people of one district (who had previously lived scattered over the various tapere) into a single village seldom occasioned serious difficulty, presumably because all the inhabitants recognized a common origin and a common high chief. On the other hand, attempts to bring together the people of more than one district were unsuccessful in the long term, and in no case did a village survive intact where people were brought to live on the lands of a high chief whose authority they had not recognized prior to European contact.[1]

The case of Atiu, which at first sight appears to be an exception, in fact serves to illustrate the rule. There the single settlement is not, and never was, a single village, but rather seven contiguous villages each on its own

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[1] In Mauke the people of the two tribes were brought to live in two contiguous villages. By a judgement of the Land Court in 1904, however, the lands of both villages were awarded to the high chief of one of them. This judgement, which united the lands, divided the people, and the aggrieved party removed to the coast where they set up a new village which they named Kimiangatau ('the seeking of justice'). On Mitiaro there has never been more than one village since 1823, but only four years prior to the mission landing in that year the island was devastated by an attack from the neighbouring island of Atiu, the leaders of the four districts were killed, and less than one hundred souls remained. When the Tahitian mission teacher arrived he brought the remnant of the people together into a single village at the landing-place, but those of each district occupied a distinct section, and their separate identity is still recognized today.

lands and each subject to its own chief.[1] The traditional division of this roughly circular island was into seven triangular tapere radiating out from the high central plateau. Whereas the people had previously resided in hamlets near the taro swamps, they now moved inland to the centre of the island, each to the apex of its particular tapere. There, the people of the component hamlets of each tapere formed a single village, under that chief whose authority they had always recognized.

A more typical pattern is shown in the case of Rarotonga, with its three pre-contact tribal divisions. At first the missionaries tried to establish a single settlement at Avarua, the district of Makea Ariki, and initially they were quite successful, for Tinomana and Pa[2] and a number of their followers came to reside there. Makea arranged the allocation of land for the various groups to build on, though the terms on which the lands were made available are not known.[3] Each ariki assumed administrative responsibility for the people from his own district. Makea, as host to the people of the other districts, at times attempted to assert authority over the whole populace, but this was keenly resented and remained a constant threat to the stability of the new settlement.

A church and mission station were built, and though all parties co-operated in these projects, each district undertook specific aspects of the work. In the early stages the people of Avarua fed the visitors, in accordance with custom. However, the numbers were so great that food

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1 Today these are usually referred to as five villages, as the three southern villages, which were the smallest, in many respects function as a single village known as Areora.

2 Ariki of the other two districts.

3 Maretu, MS 65. The village only lasted for three years.

supplies soon ran short and the visitors began returning to their own lands every day or so to collect food.[1] As the novelty of the new situation wore off, people spent more of their time back in their own tapere, and some even returned there permanently.[2] The Tahitian missionaries were allotted taro patches and the ariki organized labour to clear and plant them.[3]

Rifts soon appeared in the organization of the mission settlement. It had been intended that the ariki would confer on matters of common interest, but, owing to the status struggle between them, no long-term unity was effected. Only the strong personalities of the teachers and the promise of great rewards from Jehovah held the community together. Lacking cohesive leadership at the top, the three tribal power structures were inadequately knit, and when the balance of power shifted in favour of the Takitumu chiefs the whole settlement moved to Ngatangiia, though it was not long before many people returned to Avarua.[4] In 1827, when the first European missionaries came to settle, a further attempt was made to establish the joint settlement at Ngatangiia, but this, too, was shortlived.[5]

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1 The Avarua district had only been reoccupied the previous year following the devastation of its food crops by Takitumu. See page 87 footnote 2.

2 The same problem arose when the settlement later shifted to Ngatangiia. Pitman considered this to be one of the most cogent reasons for having a separate settlement in each district and says: 'The natives had to fetch their food from Avarua to this place [Ngatangiia] every day, consequently they could not attend to instructions unless they neglected their lands.' - Pitman to LMS 6.11.1827 SSL.

3 For a detailed description see Maretu, MS 88-91.

4 Ibid. 99-103.

5 Ibid. 109.

In that year two separate villages were formed, one at Ngatangiia and the other at Avarua. In 1828, the Arorangi people, who had been living at Avarua, got involved in a land dispute with their hosts and left to establish a village for themselves in their home district.[1] Both Avarua and Arorangi villages were smaller in population and served districts which were smaller in area. They also had stronger authority structures and thenceforth remained the sole population centres for their respective districts. Ngatangiia, on the other hand, divided within the next three decades along 'fault lines' which had existed prior to the introduction of the gospel. Kainuku's people never joined the main village, but remained in their traditional home in the Avana valley where they established a village. The Matavera people broke away from Ngatangiia and set up their own village in 1849, and the recalcitrants who lived at the western end of the district and resisted Christianity longer than any others, formed themselves into the villages of Titikaveka in 1854.[2]

The next phase was the spread of the villages from closely packed clusters of houses, usually on one tapere, to lines of houses spread out along either side of a newly-formed road which cut at right angles through the various tapere. This may be illustrated by the following sketch map of Ngatangiia village.[3]

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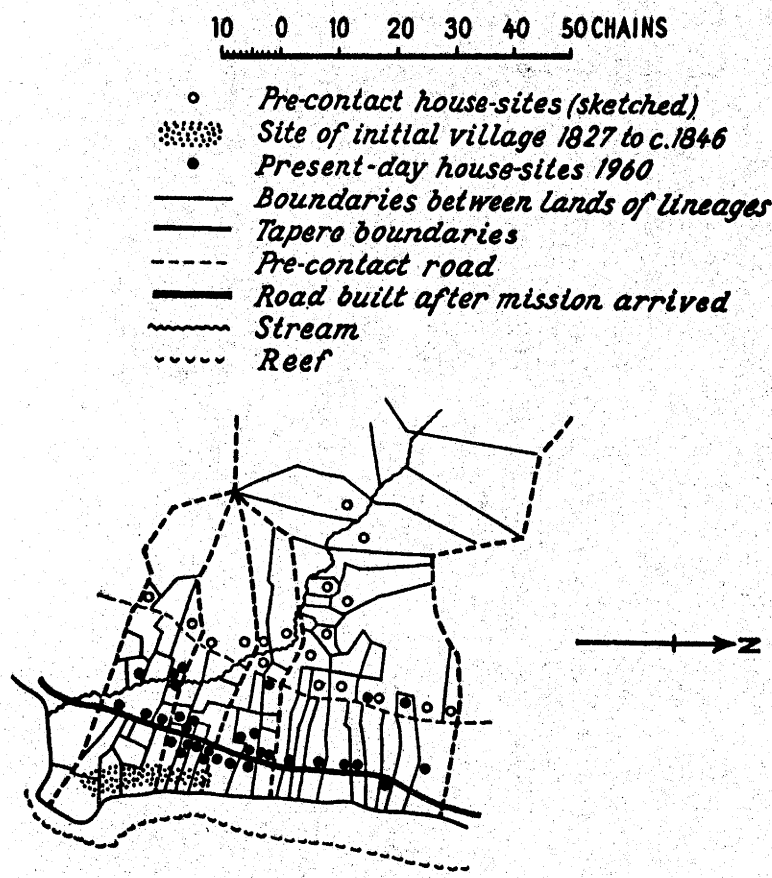
1 Pitman, Journal, November 1828.

2 In the case of Matavera and Titikaveka distance from the planting lands must also have been conducive to the setting up of separate villages. The Takitumu district is about twelve miles long, and is the largest in the Cook group. It is the only district in the group in which the populace live in more than one village.

3 Just when the spread took place is not known, though informants say that this village was in the compact form until it was destroyed by a hurricane in 1846. The Matavera people did not want to rebuild there and after much dissension finally built their own village in 1849 on

THE CHANGING PATTERN OF SETTLEMENT

TURANGI MA NGA MATAIAPO (NGATANGIIA)



It will be seen that whereas the initial village was all on one tapere, the new pattern was for each family to build beside the new road on its own tapere. This called for adjustments within tapere but not between them, and the friction which had resulted from living on the land of other lineages was to that extent overcome. However, while this trend was manifest in many islands of the group, it did not usually apply to all inhabitants, as some people

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3 (continued from previous page)
the spread-out pattern with each lineage on its own lands. After this the same tendency developed in Ngatangiia, though many people had two houses - one in the village proper and one on their own lands. My oldest informant (a man of 84) said that the old compact village had been completely abandoned before he was born. Crumbled stone house-walls and the metalled road are the only discernible remnants left today.

retained house-sites in the original village in tapere to which they had no connection by descent.[1]

On most of the islands the settlement pattern followed the same three phases: firstly, the compact agglomeration of all people at one spot, secondly, the split into separate villages each based on its own district, and thirdly the spread of the villages to a ribbon pattern such that, while the nucleus of the village remained, many people shifted along the road a little in order to build on their own family lands.[2] On some islands a small minority left the villages entirely and resumed the earlier nucleated pattern of settlement.[3]

The establishment of villages and the necessity for those who aspired to divine grace to live in them[4] meant that many people had to leave their own tapere and acquire land in those tapere which had been selected for village sites. Lands made available under these circumstances became known as akonoanga oire lands ('held in the village manner'),[5] and though the settlement pattern was new, it did not necessitate the emergence of new types of relationship in respect to rights in land. In all cases for which information is available the lands given for house-sites in the villages were given to the donee and his descendants for

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1 Ngatangiia was one of the few villages in the group where everybody removed to his own lands and none was left in the original compact village. In most places the original village became the core of the ribbon-pattern village.

2 Atiu and Mitiaro did not develop beyond the first phase. Pukapuka and Rakahanga, which had had compact villages before European contact, retained that pattern.

3 These people were usually those least interested in church affairs. Such a drift occurred on Rarotonga, Aitutaki, Mangaia and Penrhyn.

4 See Pitman, Journal 1827-30 passim.

5 In Atiu the term 'taura oire' was used.

such time as they wished to occupy, with a right of reversion to the owning lineage in the event of the line dying out or the village being abandoned.[1] The giving of land to non-relatives under conditions of this nature was not new, though the frequency of this pattern of acquisition of rights no doubt increased many-fold with the establishment of mission villages.[2]

No charge or rental was levied for the use of house-sites, though native concepts of reciprocity in most cases resulted in the rendering of gifts to the chief of the owning lineage.[3] However, whether such tribute was given on account of the house-site or on account of the normal obligation to a person higher in the social hierarchy is not clear.[4]

In the early decades, retention of the village pattern of settlement depended on the power and status of the missionaries who introduced it. As mission influence waned, people left the villages and drifted back to their lands and as mission influence waxed, people were attracted back to the villages again.[5] The maintenance of the village

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1 Re Arorangi village see MB 1:59-69 NLC; re Avarua village see MB 4:21A, B and 47A NLC; re Atiu villages see Atiu MB 1:122 NLC.

2 While house-sites only were given in all other cases, in the case of Arorangi village a large area was also set aside as a commonage for the livestock of the inhabitants.

3 The 'Land Occupants Act' of 1894 was the first legal enactment to guarantee continued occupation to persons living under the akonoanga oire. Such lands were to be held 'free of charge' and were heritable so long as there were living descendants. If there were no heirs the land was to revert to the original donor, or his issue, and in the event of the original donor having no issue the land reverted 'to the people of Rarotonga', to be administered by the Council for public purposes. However, no instance of reversion to the Council ever occurred.

4 Evidence in Land Court cases is not conclusive. See AMB 1:1-29 NLC.

5 Pitman, Journal, November 1828 and 22.10.1829; Maretu, MS 123.

pattern was vital to the mission in order to effect the teaching programme and moral supervision that it set out to accomplish,[1] and to minimize contact with the localities associated with former heathen practices. The early missionaries accordingly did everything in their power to stop the drift back to the land.[2] However, after the church and later the trading centre became accepted and established institutions, and the early problems of living on the land of others were overcome, the convenience of village life became appreciated and relatively few remained on their planting lands. In the majority of cases, each village accommodated the people of a single district.

The missionaries also persuaded the people not to accommodate more than one nuclear family in each house, in contrast to the pre-contact system whereby several related nuclear families often lived within the one building.[3] This change may well have been one of the causes which led to nuclear families planting separately, for the old living pattern was based on a kitchen, and on joint production for that kitchen and joint consumption from it. The setting up of separate kitchens probably facilitated, if it did not cause, an increase in separate plantings.

The effects of social and demographic upheaval

Following initial conversion, a state of tension developed on most islands between the converted party and

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1 Royle reported with approval the conditions in the Aitutaki village where 'their conduct [was] open to the closest observation and their principles and motives inviting the strictest scrutiny'. - Royle to LMS 22.7.1846 SSL.

2 This drift was manifest throughout the Southern Group, but did not occur on the atolls with the exception of Penrhyn.

3 Pitman, Journal 10.10.1827. Nevertheless, for some years thereafter one finds references to there being twelve or

the heathens. In Rarotonga the teachers engaged in skirmishes against non-Christian parties and were not averse to confiscating lands and distributing them among their supporters.[1] Within a year or two of the arrival of the first missionaries at Rarotonga they had been given literally scores of plots of land, some from fear and some in an attempt to court favour.[2] Most of the lands held by the mission teachers and their followers were later returned to their former owners,[3] though some were retained permanently.[4]

The cessation of polygamy at the instigation of the mission resulted in many wives returning with their children to their families of origin. The children then inherited in the maternal line in the same manner as they would have if their fathers had been living uxorilocally.[5] Alternatively, some polygamous husbands allocated certain lands to the wives they had set aside, for the use of themselves and their children.[6]

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3 (continued from previous page)
more in many homes and even twenty in some - e.g. Mrs Buzacott, Journal 4.5.1830; Pitman, Journal 10.5.1830. By 1846, however, Avarua's population of about 920 were accommodated in 220 houses - an average of just over four persons in each.- Boston Daily Whig 1.8.1846.

1 '...the servants of Rio [a Tahitian missionary] seized the kaingas [lands] of several chiefs and retained them to this day.' - Pitman, Journal 30.12.1827. He later describes other confiscations in which the teachers had participated and says that the people '...repeatedly told me that it was done by the two teachers...'. - Journal, February 1829. Rio possessed the only musket on the island.

2 'The various ariki and mataiapo gave pieces of land right round the island to the teachers.' - Maretu, MS 88. The teachers held 'a great many kaingas or portions of ground, which were...given them, at least some of them, from fear.' - Pitman, Journal 10.11.1827. He also observed that the 'chiefs as well as the poor people seem to be absolutely afraid of them, especially of Rio'. - Journal 12.9.1827.

3 Pitman, Journal 20.12.1827.

4 Such as those lands still held today under the Rio and Papehia rangatira titles.

5 As occurred with the issue of the first wife of Makea Pori - MB 23:11 NLC; and with the rejected wives of Rongomatane Ngaakaara of Atiu - Vaine Rere,MS 2.

6 E.g. Kainuku Ariki, as detailed in MB 1:266-94 NLC.

A particular method of adjustment which occurred as a result of the establishment of the villages was the exchanging of a house-site in the new village for a plot of land elsewhere. While it was not widely practised, it was not uncommon in Aitutaki, and occurred in a few instances on Rarotonga.[1] Exchange did not become customary, and after the villages became permanently established no further instances of it are recorded.

The first two decades of contact with European culture were marked by catastrophic population decline. In 1827 the population of Rarotonga was estimated at 6,000 to 7,000.[2] By 1848 it had been reduced to 2,800,[3] and by 1867 the numbers had fallen to 1,856.[4] Although the decline was continuous, it was not steady, periods of relative stability being followed by sudden waves of deaths resulting from epidemics of introduced diseases.[5] In the dysentry epidemic of 1830 the dead were being buried at the rate of ten to twenty a day in mass burials,[6] and many houses were left uninhabited, 'all their former inmates having gone to the grave'.[7] A similar pattern of population decline occurred throughout the Southern Group, though on Mauke, Mitiaro and Atiu the losses were less severe.[8]

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1 Re Aitutaki see Aitutaki MB 14:241-2; re Rarotonga see AMB 1:18 and Pitman, Journal 15.2.1830.

2 See page 45.

3 Pitman to LMS December 1848 SSL.

4 Lovett, James Chalmers: His Autobiography and Letters 82.

5 Major epidemics were dysentry in 1831 and 1843, whooping cough in 1848, mumps in 1850, fever in 1851, and measles in 1854.

6 Maretu, MS 134. He claims that a thousand people were buried at the Rangititi burial ground and six hundred at Araungaunga during the epidemic.

7 Prout, Memoirs... 313.

8 McArthur, Populations of the Pacific 83-9.

As a result of these epidemics much land must have reverted by escheat to the heads of the various descent groups, and it is probable that many minor lineages and kiato either died out or were absorbed by others. Absorption of this type inevitably favoured those of higher rank as unclaimed rights reverted to the titleholder next in seniority in the rank hierarchy. In 1842 there were more than one thousand orphans on Rarotonga,[1] and in 1846 almost twenty per cent of the children on Mangaia had lost their parents.[2] As many adoptees did not inherit rights to all the lands of their adopting parents, but only to specific portions of them, this would tend to further accretions by titleholders.[3]

In 1862 Peruvian slavers raided the northern atolls. Within three years the depredations of slavers and epidemics had reduced the population of Penrhyn from 700 to 60.[4] Immediately prior to the raids the people were living in three groups on separate islets. The majority of the people in two of these groups embarked for Peru, but none of the third group left. The leader of the group which remained behind thereupon brought the remnants (the majority of whom were presumably women and children) to live in his village.[5] The exercise of land rights was further complicated when a ship repatriating Gilbertese slaves dumped one hundred and

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1 Gill, Gems... 69.

2 George Gill to LMS 1.1.1846 SSL.

3 I have frequently heard it said by members of the older generation in both Rarotonga and Atiu that prior to the setting up of the Land Court many people were anxious to adopt the only surviving child of parents who had died. The adopting parents then took control of the land which the child was to inherit, but often retained the bulk of it as their own, as the child was unaware of the extent of its rights.

4 Royle to LMS 17.5.1865 SSL.

5 Chalmers, Journal 4.7.1872 to 13.9.1872 SSJ.

eleven of them on the island in 1865.[1] Some of these were later taken to Manihiki and Rakahanga and the bulk of them were finally repatriated to their home islands about 1877.[2] However, during their sojourn on Penrhyn they must have acquired some rights to the use of land, and they undoubtedly produced offspring whose descendants remain on the islands today.[3] Slavers removed about a hundred people from Pukapuka in 1863,[4] but attempts to entice people from Manihiki failed. At least a hundred were taken from Rakahanga,[5] and of these one group of eighty-seven was comprised of 'whole families'.[6] As none of these people ever returned,[7] their land rights must have been assumed by those who remained behind, though just how they were allotted is not known. Only a handful of slaves were taken from the Southern Group, and as these were young men their departure would have had little effect on land distribution.

From the mid-1840s large numbers of young men began signing on as crew on whalers and other vessels. Pitman estimated that over a hundred had gone to sea from his district alone between December 1848 and July 1849, and that equivalent numbers had gone from the other districts.[8] The selective pressures operating resulted in the great majority

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1 Royle to LMS 17.5.1865 SSL.

2 Bingham to Clarke 7.2.1878 ABCFM.

3 The languages and physical features of the Penrhyn (and some Manihiki and Rakahanga) people show distinct Micronesian traits which are probably attributable to this chapter of events.

4 Beaglehole, Ethnology of Pukapuka 5.

5 Captain Henry Richards to Rear Admiral Kingcombe 8.5.1863 Adm. 1:5826 PRO.

6 Wyatt Gill, Journal 9.2.1863 to 23.3.1863 SSJ.

7 With the single exception of Pilato of Pukapuka.

8 Pitman to LMS 3.7.1849 SSL.

of those who left being young males who were neither married[1] nor members of the church.[2] Few of those who went to sea ever returned.[3]

With the decline of whaling in the 1850s the young men began travelling to Tahiti, California, Samoa and elsewhere to seek employment.[4] Before long even larger numbers were being recruited by labour ships to work on plantations and guano islands outside the group. While no statistics have been compiled, literally scores of references show that a very considerable proportion of the young adult male population was away from the group between 1850 and 1880.[5] On Aitutaki 'scarcely a lad [was] left for the work of the land'.[6] The position on Mauke and Mitiaro was no better for in 1871, out of their combined populations of 380, a total of only 32 men was left and as a consequence gardens were neglected and food was in short supply.[7] This organized recruitment of labour was controlled by the

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1 The proportion of men to women at the time emigration began was approximately 100 to 150 - William Gill to LMS 26.3.1841 (reporting census taken). In 1849 it was estimated that there were two marriageable males to every marriageable female - The Friend 1.3.1849.

2 While youths were constantly leaving Mangaia to go to sea, by 1855 only two church members had gone. - Wyatt Gill to LMS 6.7.1855 SSL.

3 Pitman estimated the number at only one in twenty. - Pitman to LMS 1.1.1852 SSL.

4 Re Tahiti and California see George Gill to LMS 22.11.1850; re Samoa see Krause to LMS 23.8.1864 SSL.

5 By 1853 there were so many Cook Islanders in Tahiti that a special pastor was appointed to look after their spiritual welfare. - Gunson, 'Evangelical Missionaries in the South Seas 1797-1860' 525. In 1861, 70 Manihikians were employed on Washington Island. - The Friend 19.10.1861. For many years Atiuans were regularly engaged for work on Malden Island. - Arundel, Diary 5.11.1870. In 1869 some 42 Pukapukans were taken to work in Hawaii. - Beaglehole, Ethnology... 5.

6 Royle to LMS 13.12.1873 SSR.

7 Vivian, April 1871-6.2.1872 SSJ. Probably a high percentage of those remaining were aged or infirm.

ariki,[1] who thus gained an additional source of income and personal power.

Within most of the islands there was a drift towards that village which became the port and trading centre. For example, on Mangaia in 1854 there were some 172 persons living in the 'port' village of Oneroa who belonged to the other two villages, but neither of them contained any Oneroa people.[2] Moreover, while the average lineage in Oneroa contained 82 persons, that of the other two villages contained only 65.[3] In Rarotonga, whereas at the time of first contact Avarua contained twenty-three per cent of the island's population, by 1854 it was the most important port and trading centre and had thirty-one per cent of the population.[4] By 1895, when it was the headquarters of the Cook Islands Federation, it contained forty-five per cent of the island's population.[5]

This drift was effected by a relatively greater percentage of persons in the port village than in other villages, basing their claims to membership on customary criteria other than the norm of patri-virilocal residence. To some extent this was no doubt a voluntary shift due to preference for residence near the port, and accomplished by residence with matrikin or other relatives, by living with one's wife's lineage if she came from the port village, or by permissive occupation with some family in the area.

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1 Arundel, Diary 29.10.1870. At Atiu, while the high chief organized the recruiting of labour he restricted numbers to the extent of ensuring that some able-bodied men were left to each extended family. - Messager de Tahiti 28.5.1864.

2 'Census of the Population of Mangaia' December 1854 SSL.

3 Based on data in the above census.

4 Based on 'Census of Rarotonga' 1854 SSL.

5 Based on 'Census of Rarotonga' as at 1.6.1895 NZPP A3 1896.

To some degree, however, it was also a forced shift, for strangers from overseas as well as those from other villages married the port town women and lived on their lands, forcing local men to seek their wives in other villages. This resulted not only in greater pressure on the land of the port village, but in a higher percentage of persons there acquiring their land rights through secondary avenues. Both factors were conducive to an increase in disputes over land.

The next phase of population movement was from the outer islands of the Southern Group to Rarotonga.[1] While this drift was manifest from all the islands, it can best be illustrated by the case of Mangaia, the island from which the largest stream originated. The chiefs of Mangaia had prohibited emigration during the 1860s and within three months of the lifting of this ban in 1872 over one hundred young men migrated to Rarotonga. That the migrants came more from the port village of Oneroa than from the other villages is shown by the fact that whereas before the migration began the average matakeinanga (a local group based on a lineage) in Oneroa had contained an average of seventeen persons more than those of the other villages, by 1880 it contained an average of seven persons less.[2] Whereas Oneroa contained sixty-four per cent of the island's population in 1854, it contained only fifty-five per cent in 1880.[3]

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1 Migration to Rarotonga from the Northern Islands was insignificant until after the turn of the century. Prior to that time the main stream of migration from these islands had flowed to Tahiti.

2 Based on comparison of data contained in 'Te Rainga io Mangaia i te Marama ia December 1880' (Census of Mangaia as at December 1880) CIA; and 'Census of the Population of Mangaia' December 1854 SSL.

3 Ibid.

By 1895 Rarotonga had a population of 1,623 Rarotongans, 282 Mangaians, 77 Aitutakians, 139 persons from Atiu, Mauke and Mitiaro, and 186 other islanders, as well as 147 non-Polynesians.[1] While some of the immigrants were spread throughout the island, the bulk of them lived in the Avarua district, where forty-two per cent of the population was non-Rarotongan.[2] Initially these immigrants could acquire the use of land by permissive occupation only[3] though some of the migrants married into their host lineages, thus improving the security of the tenure of the land occupied by them.

The rights of those who left for overseas were not necessarily protected, and some of those who remained away for long periods found on their return that the rights to many, if not all, of their lands had been assumed by somebody else - generally a titleholder further up the hierarchy.[4] In fact, as most of the islands had prohibitions on emigration from time to time, those who emigrated during such periods were likely to be treated with little sympathy on their return,[5] and this knowledge may well have contributed to the fact that a high proportion of those who left never came back.

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1 'Census of Rarotonga' as at 1.6.1895 - NZPP A3 1896.

2 Ibid.

3 There was no selling or leasing of land among the islanders.

4 E.g. MB 22:46 NLC.

5 Prohibitions against emigration existed on Mangaia and Aitutaki for many years. - Chalmers to LMS 23.12.1872 and 19.12.1870 SSR. On Rarotonga all agreements for men to leave the island had to be made before 'the ariki and the missionary'. - 'Laws of Rarotonga...' 1879 clause 34. The whaler 'Emily Morgan' found in 1851 that despite this ruling (which they found then operative) numbers of natives applied to be signed on clandestinely. One man whom they repatriated to Rarotonga had a few days ashore and then begged to be taken away again. - [Jones] Life and Adventure in the South Pacific 96.

Moreover, under native custom, rights which were not exercised tended to lapse, and the rights of those who left a landowning group reverted to that group or to its head as trustee. Reactivation of abandoned rights was possible only to the extent that the head of that group chose to grant them.

In pre-contact times, with the exception of Atiu, Mauke and Mitiaro, there is little evidence of regular contact between the islands, and no evidence of any express provision being made regarding the land rights of persons who left for indeterminate periods and who might or might not ever return. The absentees were contingent members of the extended families from which they originated, but contingent membership of a descent group was normally associated with continuing interaction on appropriate social occasions. As most absentees were unable to maintain any contact with their home islands, as those at home were seldom aware of just where the absentees had gone or what their intentions were, and as few indeed ever returned,[1] their contingent rights became increasingly marginal with the passing of the years. While the customary principles relating to contingent members applied to the absentees, the application of those principles was modified by new conditions, the most important of which were that the power of chiefs (particularly high chiefs) over land had increased, and that alternative ways of exploiting land rights had emerged.

It was not uncommon during the latter half of the nineteenth century for a rangatira who departed for other shores to leave his title, lands and people in the hands of the ariki.[2] While there is inadequate evidence on which to

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[1] With the exception of labour recruited in groups to work in particular places for specific periods.

[2] E.g. MB 15:182 NLC.

make a categorical statement, one gains the impression that in the pre-contact period the appropriate deputy of a rangatira was the person who would probably inherit the title after him, in other words the next person down in the authority hierarchy. This, however, had been a provision for illness or incapacity, while the titleholder was present though not active, and this custom seems to have continued in the post-contact era. Provision for absence from the island for indeterminate periods such as occurred in the nineteenth century may well have had no pre-contact precedent. Post-contact practice by the latter half of the nineteenth century at least was for the title to be held by the next person up the scale.[1] While this may have been due to increased ariki power at this period, an alternative explanation is that by this means the titleholder felt that the chances of regaining his title on his return were better than if he delegated his rights to a deputy who might, in the course of time, consider himself to be the true titleholder.

While at the time of departure titleholders probably intended their absences to be only temporary, some were in fact away for decades and others never returned. During their absence, the ariki, in his role as rangatira, often allowed strangers to occupy portions of the land, and in some instances appointed them as titleholders (usually with

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[1] There are no instances of ariki being absent from their islands for long periods with the exception of Ngamaru Ariki, the paramount chief of Atiu who married Makea Ariki of Avarua. He in fact maintained his title and power and made frequent visits to his island to do so. Minor matters were attended to for him by the chief judge (a leading mataiapo) whose authority was clearly subordinate to that of Ngamaru. There are few instances of mataiapo being absent for long periods, but in such as have been recorded, the title and lands were administered by the ariki in the meantime.

a new title name).[1] Sometimes when a titleholder on the island died, the heir was absent from the island, and the ariki assumed a trustee role in his absence. Not infrequently, however, the heir did not return, and even if he did the ariki was sometimes reluctant to relinquish power which had been his prerogative for so long.[2]

As a by-product of this population movement, some influential individuals were able, through migration and marriage, to hold land rights on more than one island.[3] Such instances were uncommon, however, and the actual exercise of land rights in absentia was quite rate.[4]

Towards the end of the century, when ariki powers over land were at their height, it became common to regard the strip of infertile coastal land which lay between the lagoon and the coast road (which had been constructed in the 1830s) as being 'under the special control and mana of the district arikis'.[5] This was not in accordance with pre-contact custom under which the mana of the ariki over the whole district did not extend to such lengths, but was sufficiently widely recognized by 1903 to have been the basis for an ordinance under which one could not exercise any act of ownership on these lands without the written permission of the district ariki.[6]

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1 Tinomana Ariki awarded titles to Salmon (a European), Taripo (a Chinese), Papehia (a Tahitian) and John Vairakau (a Hawaiian).

2 E.g. 106 E Rehearing NLC.

3 E.g. Tangiau who held rights in Mangaia and Rarotonga - Deeds Register Item 98 NLC; Tapanga who held rights on Rakahanga and Rarotonga - Hamilton Hunter to High Commissioner 10.9.1896 WPHC.

4 The only case noted was that of Ngamaru Ariki who leased lands on Mauke and Atiu, and performed other acts of ownership while resident in Rarotonga.

5 'The Coast Timber Preservation Ordinance' 1903. It stated that this control and mana had been recognized for over twenty years.

6 Ibid. The ordinance was designed to preserve the coastal shelter-belt. There was no suggestion that the ariki held proprietary rights in such lands, but merely rights to control.

Foreign settlement

From the early 1830s onwards foreign traders and planters attempted to settle in the islands. They were strongly opposed by the European missionaries who consistently warned the chiefs of the dangers of settlers and were able to have laws enacted to prohibit or limit settlement.[1] While these laws were adopted by the chiefs of the various islands, the available evidence shows that their enforcement was usually a result of mission pressure.[2]

On Aitutaki and Mangaia (where European missionaries were based) foreign residents other than employees of the church were specifically forbidden,[3] and on all islands the sale of land to foreigners[4] and the marriage of foreigners to native women were prohibited.[5] There were also

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1 The mission role is well illustrated in a letter from Reverend Buzacott in which he forwarded draft regulations which he had drawn up 'by order of the chiefs of the island respecting foreigners etc. Will you state if there be anything objectionable in them, as they would readily alter any of them at our suggestion'. - Buzacott to LMS 8.12.1838 SSL. Though most naval commanders supported European trading and mission interests, Sir Edward Belcher says he used his 'best efforts to alarm the chief' of the dangers of allowing foreigners to settle. - Belcher, Narrative of a Voyage Round the World performed in His Majesty's Ship Sulphur during the years 1836-42 2:18.

2 E.g. re Mangaia see Report of Judge Tepou 23.9.1890 FO.58 PRO. Re Rarotonga see Teava Orometua to Mrs Buzacott 30.1.1865 SSL. Re Atiu see Buzacott to LMS 8.12.1838 SSL.

3 Re Aitutaki see Royle to LMS 10.1.1848 SSL; re Mangaia see Harris to LMS 20.8.1881 SSR. A prohibition against residence also applied on Rarotonga from time to time. - William Gill to LMS 18.6.1845 SSL.

4 E.g. 'Laws of Rarotonga...' 1879 clause 21.

5 While this rule was no longer applied in Rarotonga in 1879 and was thus not included in the code of laws of that date, numerous references to its existence at an earlier stage are available. E.g. Mrs Buzacott, Journal 3.4.1841; William Gill, Selections from the Autobiography of the Rev. William Gill 252. One reason for this law was to stop foreigners acquiring land rights through native wives. - Hutchen to LMS 10.9.1900 SSL.

regulations forbidding sailors quitting their ships[1] and banning the introduction of foreign labour.[2]

Notwithstanding these limitations, and despite active mission opposition, a few foreigners were resident on each of the larger Southern Group islands almost continuously from 1840 at least, and most of these had overcome the marriage rules and taken native wives. This, it appears, was due to the fact that the high chiefs often found it to their advantage to give patronage to a selected few Europeans who would co-operate with them. Until 1865, however, excluding temporary increases due to shipwrecks, there were never more than a dozen Europeans on any one island. Of these, the beachcombers probably had little effect on land tenure, for they became absorbed into the indigenous social system. The traders did not have much direct influence, for they were interested not in the land itself, but in the purchase of what other people produced from it. Such land as they needed for their own house-sites and subsistence was allocated to them according to the accepted pattern of permissive occupation by the high chief to whom each attached himself, and their children acquired their land rights through their mothers as with other uxorilocal marriages. The power of the high chief under whose patronage the trader lived was enhanced by the fact that between them they could, and often did, obtain a monopoly of trade.[3]

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1 The Market House, Avarua, Regulations and Prices. Also 'Laws of Rarotonga...' clause 20.

2 'Laws of Rarotonga...' 1879 clause 42. This clause was effectively enforced - see Kelly, The South Sea Islands - Possibilities of Trade with New Zealand 54; also Moss to Governor 29.7.1892 NZPP A6 1893.

3 Every trader for whom information is available had an 'entente cordiale' with one high chief or another, and generally married that chief's daughter or other close relative - e.g. Exham on Atiu lived with Ngamaru Ariki and was married to his daughter (Arundel, Journal 5.11.1870); Pearse on Mangaia lived with one of the Governors (Exham to

The men who had a more direct influence on native concepts of land tenure were the settlers who wanted to acquire land permanently or for long periods in order to grow cash crops. The first of these was Alexander Cunningham, who established a sugar plantation on Rarotonga in 1836.[1] Cunningham was closely associated with the mission, so much so that in the early stages he lived with the local missionary[2] and had land, which was allotted to him by Judge Tupe, planted by the communicants of the Ngatangiia church.[3] Cunningham's venture was cut short by a moral lapse and he left the group within three years.[4] No other settler was on such intimate terms with the mission; in fact few were other than actively hostile towards it.

Apart from several persons who settled on Mangaia in 1855 to raise stock and produce for the Tahiti and California markets, there were few planters in the group until 1865. From then onwards the number of European residents grew steadily until in 1881 there were seventy of them in Rarotonga alone,[5] though never more than ten on even the largest of the other islands. However, the bulk of these were traders and only a small percentage had plantations. The great majority of resident foreigners were Europeans, though from 1880 onwards a minority of Chinese merchants

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3 (continued from previous page)
High Commissioner 1.9.1890 FO 58 PRO) and had an 'undue influence over the King' (Chalmers to LMS November 1890 SSR); Salmon on Rarotonga was married to Tinomana Ariki (Governor to Colonial Office 7.7.1900 CO 209 PRO). All of them held land from the respective chiefs.

1 Wheeler, Memoirs of the Life and Gospel Labours of the late Daniel Wheeler 544.

2 Ibid.

3 Maretu, 141.

4 Heath, Day and others to Palmerston 14.5.1839 SSL.

5 Wyatt Gill to LMS 16.8.1881 SSL.

entered the group and, in addition, there were a few Negroes.

The pressure against foreign settlers was so strong that many who wanted land were unable to acquire it, in most cases due to active mission opposition,[1] and most of the land which was acquired was held by the planter on an informal basis from the high chief of the district.[2]

Some of those who did acquire rights to land encountered difficulties in relation to the precise nature of those rights: a problem which was due to the differing concepts of natives and Europeans. For example, an American settler who was friendly with the Chief Judge of Avarua asked for and was allocated a plot of land on which to grow vegetables. When he later fenced the land two young men came and started building a house on it. The American's protest was considered by the ariki, who rejected it as the land in question had been the house-site of the deceased father of the young men. The settler thereupon asked his host about a small coffee plantation which he had established inland and which he thought he could sell on his departure from the island. 'When they bear fruit,' his host told him, 'the fruit is yours, but the ground is

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1 See, for example, Irvine to Consul 23.2.1866 TBC; Chace and Turner to Wesleyan Mission Society 26.3.1841 SSL; Minutes of the annual LMS committee meeting (at which the missionaries reaffirmed their policy of preserving all land for the use of the natives) 21.12.1869 SSL.

2 In 1883 the High Commissioner for the Western Pacific required that all sales and leases between natives and whites had to be registered with the Commission. - High Commissioner to Secretary of State 15.2.1883. However, this decree was countermanded late in the same year. - Secretary of State to High Commissioner 24.9.1883 CO 225 PRO. On 17.7.1891 a Deeds Register was opened in Rarotonga, providing for registration of leases and other transactions. Some of the leases then registered date from pre-Protectorate days but, though it is known that many Europeans were occupying land in those days, very few of these were recorded in the register.

mine and the trees are mine.'[1] Again, on Mangaia, a European who had acquired rights to a piece of land was opposed by the 'King and Governors' when he attempted to sell the land to another European.[2]

Provision for the registration of land transactions was made in 1891. Almost all leases recorded were between foreigners and particular ariki, a few were between foreigners and mataiapo, few if any were between foreigners and native commoners, and none at all between natives.[3] The bulk of registered leases were for lands in the Avarua district of Rarotonga, some concerned lands in the other two districts, but there were relatively few in the outer islands.[4]

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1 Gill, Gems... 74-5. In all probability the American regarded the gifts he had given his host to be payment for the freehold of the land.

2 King and Governors of Mangaia to British Consul 26.3.1866 TBC.

3 Of the 79 leases by natives to Europeans (there were in addition a few sub-leases from Europeans to other Europeans) entered in the Deeds Register from the time of its opening in July 1891 until January 1899 (the date to which data was abstracted), 59 were by ariki (including 2 by the European husband of Tinomana Ariki), 4 by mataiapo, and 4 by rangatira. Of the remaining 12, 2 were made by the Government of Aitutaki, 1 by 'a governor and two landowners' of Mangaia, and 9 by persons whose rank status is not known - based on Deeds Register NLC.

4 Of the above 79 leases, 44 were in respect of land in the Avarua district, 11 in the Takitumu district, and 11 in the Arorangi district. Of the remaining 13, 5 were in Aitutaki, 4 in Mauke, 2 in Atiu, and one each in Mangaia and Manuae - based on Deeds Register NLC. This, of course, covers only the registered leases, and according to Moss the bulk of Europeans occupying Maori land did so 'in the Maori tenure' and subject to 'the Maori obligations'. - Moss, JPS 3:20-6. While the 'Act to Guard against Secret Dealings in Native Lands' of 1895 required that all existing leases be registered within three months, only a few were registered within the period prescribed and numbers of registrations over the succeeding four years were in respect of leases negotiated prior to the passing of the Act. Whereas in 1888 considerable tracts of land were held by foreign settlers and companies in Aitutaki, none of them were recorded in the Deeds Register. - Bourke to Admiralty 13.11.1888 CO 225 PRO.

The total area leased to foreigners is not known, though nearly half of the registered leases were for house-sites only. Of the 64 registered leases made before 1899 for which areas can be determined, 29 were for lands under one acre in area, 16 for lands from one to ten acres, 13 for lands from ten to one hundred acres, and 6 for lands over one hundred acres.[1] On Rarotonga, where most of the leasing took place, approximately 1,200 acres of land had been alienated to foreigners by way of lease or gift by 1899.[2] In view of the fact that much of the land occupied by foreigners was not registered, and that such areas would thus be additional to the above, the amount alienated constituted a considerable proportion of the island's 5,200 acres of arable land.[3]

When Britain declared a protectorate over the Southern Cook Islands in 1888, New Zealand was anxious to be responsible for its administration. The Colonial Office was agreeable to this proposal, but made it conditional on the prohibition of the sale of native land.[4] Following his appointment in 1890 the British Resident (supported by other resident Europeans) attempted to promote organized settlement of the group. He initially recommended the

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1 It should be noted that this covers only those leases which were registered, and of these only those whose areas have been able to be determined (by tracing the blocks of land to later survey records).

2 This includes 929 acres of land for which the area is accurately known, an estimated 120 acres of land which was registered but the area of which can only be assessed, and an estimated 150 acres of land alienated by way of gift by Tinomana Ariki. No estimate can be given of the amount of land occupied by Europeans but not formally leased.

3 Not all the land leased to foreigners was arable (as some leases ran from the coast to the mountains and encompassed a variety of soil types) but the bulk of it undoubtedly was.

4 Colonial Office to Governor 8.2.1890 PRO.

introduction of Christian Japanese,[1] but other European interests favoured white settlers. A newspaper was established whose 'chief aim [was] to encourage the taking up of our waste lands by willing and thrifty settlers'.[2] In 1894 the Resident proposed to the Rarotonga Council that blocks of unoccupied land be set aside for settlement by foreigners and recommended a trial settlement of twenty to thirty families in one area.[3] The Council recommended the proposal for the consideration of the ariki[4] but no further action was taken.

Despite these pressures, relatively little additional land was leased, owing to the fact that the Maori people were not prepared to make the lands available, at least not at the prices offered.[5] In their opposition, which was due in part to an increasing assertion of rights by the growing foreign population, and to the latter's disregard of local law, they were still supported by the mission.[6] By the turn of the century, we are told, the few settlers who had come were 'of a very indifferent class' and only one of them had made significant improvements to the property he had leased.[7]

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1 Moss, NZPP A3 1892:35. As this proposal was opposed he later advocated settlement by Europeans or others who would utilize local labour on their plantations. - Moss, Fortnightly Review 54:786.

2 Ioi Karanga, editorial 29.1.1898. This paper propounded this view until it ceased publication in 1901. Another newspaper, Te Torea (which ran from 1895 to 1899) also supported foreign settlement.

3 Moss, NZPP A3 1895:14.

4 Ibid.

5 In 1897 intending settlers were leaving as they could not obtain land at 'prices they could afford to pay'. - Te Torea 5.7.1897.

6 [Hutchen], 'Phases of Native Life and Christian Work in the Hervey Islands' 14.

7 Gudgeon, NZPP A3 1900:23.

Using native labour, Europeans settled and exploited the various uninhabited islands of the group, and most of them claimed ownership by occupation. Nassau was occupied as from 1877[1] and from that time onwards until 1952 was regarded as private property held in non-native hands. Palmerston was settled by William Marsters and his family in 1862 and he later claimed absolute ownership by virtue of undisturbed occupation and improvements effected.[2] Marsters' claim to the island was recognized by the British government in 1892, though only as a leasehold from the Crown. The firm of Henderson and MacFarlane took possession of Suwarrow in 1877,[3] and it passed to other firms thereafter.[4] The above three islands were unoccupied at the time of first European contact, and though the people of Pukapuka laid some claim to Nassau[5] the other two islands have never been claimed by any native peoples.

At the time of first European contact the island of Manuae was inhabited by Aitutakians who had obtained it by conquest from the people of Atiu, but the population dropped so low that the island was abandoned in the 1830s. It was thereafter occupied by one European and another under varying arrangements with the Aitutaki authorities until one of the Europeans tried to sell the island, after which time the Aitutaki chiefs kept their own representatives

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1 Minute dated 17.2.1890, FO 58 PRO.

2 William Marsters to Governor of Fiji 6.1.1888 WPHC.

3 HBM Consulate for Samoa Record 4 Register no.927 SBC. The island had been leased in 1866 but abandoned shortly thereafter.

4 First to the Pacific Islands Company, then in 1903 to Lever Bros. Ltd, and thence to A.B. Donald Ltd.

5 Though none had lived there or actively used the island for generations.

there[1] until it was legally leased in 1893.[2] The only other island which was uninhabited at the time of first contact, or has become so since, was the coral island of Takutea, which was unsuited to permanent habitation due to the lack of fresh water and the tiny area of land.[3] This island remained as it had been prior to European contact: the undisputed property of the people of Atiu. There is no evidence of foreign settlers acquiring plantation land in any of the inhabited islands of the Northern Group or on Mitiaro.

On the whole, the direct influence of European settlers was not great, partly because they had no direct representation on any law-making body, and partly because all their activities in relation to land were mediated through the high chiefs. The effectiveness of the opposition to settlement by the mission and the native people was no doubt due to the fact that the Cook Islands were small and isolated and lacked large quantities of unexploited resources. Accordingly the number of intending settlers was relatively small and could be controlled. Moreover, the settlers were not at this stage actively supported in their ambitions by any foreign power.[4] Throughout the period, all permanent

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1 Evidence presented to Major J.T. Large, Resident Agent at Aitutaki on 31.10.1901 NLC.

2 Minute of 1.12.1905, Manuae file CIA. There had been informal leases of the island prior to this date.

3 It is only 302 acres in area.

4 A study of other Pacific territories shows that nowhere were native governments or the missionaries able to resist the pressures of large numbers of settlers supported by their respective governments. While New Zealand was interested in settlement, she was at this stage unable to undertake any positive action. At the time of handing over the administration of the Protectorate to New Zealand, the Colonial Office noted that New Zealand had mismanaged its own Maori lands, and that Cook Islands land affairs would need watching from London. - Colonial Office minute of 20.9.1888 CO 209 PRO.

alienation to foreigners was avoided.[1] Certain lands were set aside on each island for the churches, but usually only sufficient for church buildings and grounds, for the pastor's residence and the cemetery. In many parts of Polynesia agricultural lands were set aside for commerical exploitation by religious bodies in order to finance their activities, but this did not occur in the Cook group. Such lands as were set aside for church purposes were given by the owners and not sold,[2] and they almost invariably carried a right of reversion to the owning lineage in the event of their abandonment by the church.[3]

One significant by-product of the settlement by Europeans and Chinese, as well as by islanders on islands other than their own, was a marked increase in uxorilocal marriages and a consequent increase in the number of persons claiming their land rights through their mothers. While some outsiders settled on each of the islands, the numbers were greatest in Rarotonga, where the maximum concentration occurred in the Avarua district.

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1 Occasional illegal alienations were made, but these were not recognized by the Land Board of 1899 or the Land Court from 1902; e.g. Deed 87 re gifts of land by Tinomana Ariki - Deeds Register NLC; and Tararo Ariki's lease in perpetuity - NZPP A3 1896:31.

2 With the single exception of Takamoa in Rarotonga, which was sold to the mission for 150 dollars.

3 Hutchen to LMS 10.9.1900 SSL.

Chapter 8

THE FORM AND FUNCTION OF INTRODUCED LAWS

The mission role

The Tahitian teachers made no conscious modifications to land custom, and in some cases not only condoned acquisitions by conquest but actively participated in them. When the European missionaries arrived, however, and were confronted with land disputes which threatened to develop into open warfare, they set about effecting changes. Largely as a result of their influence the extent of warfare lessened year by year, and from the mid-1830s onwards it became a rare occurrence. Ritual plunder, too, seems to have been abolished by the missionaries, for no instances of it are recorded after the first few years of contact.

The abolition of warfare and ritual plunder, and a lack of formal provisions for settlement of disputes between districts led to an increase in settlements by negotiation, often with the advice or participation of the missionaries.[1] While missionaries were instructed from their London headquarters to avoid interference in land matters, they frequently found themselves involved. It was not only European missionaries who participated in land disputes, for references to the involvement of their native

[1] Re Atiu see Buzacott to LMS 18.8.1845 SSL; re Rarotonga see Pitman, Journal, November 1828; re Aitutaki see Lawrence to LMS 23.9.1887 SSL.

counterparts are not infrequent.[1] While the missionaries usually accounted for their participation by describing it as a search for peaceful settlement, this objective was not always attained. The missionaries were anxious that native custom should be codified into law, though with certain modifications to make it compatible with their conception of Christian justice. Having already made law codes for the Society Islands, they used the Raiatea code as a model for the Rarotonga one of 1827 - the first legal code ever made in the Cook group. The earliest example of Cook Islands legislation to have survived is a copy of the laws of Rarotonga as they were in 1879, which, though based on the original prototype, had been amended and expanded.[2]

The missionaries who initiated the Rarotonga code assure us that it was based on prevailing custom, and that they merely advised and recorded. The laws relating to land appear to be compatible with what is known of existing usage, though they provided for only a small part of the total body of custom, laying down only broad general principles and in some cases a scale of penalties in the event of their infringement. The relevant clauses are as follows:

Clause 5: Disputes about Land

> If a chief[3] enter the land of another chief and claim it, the law shall decide between them. If the chief who is wrong persist in that wrong, then all the chiefs shall assemble and decide what his punishment shall be....

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1 E.g. 'It is not a good sign to hear so frequently of their complications with traders and with land affairs.' - Harris to LMS 20.8.1881 SSR; Chalmers to LMS 23.12.1872 SSR; Vivian, Journal, April 1871 to 4.6.1872 SSJ.

2 'The Laws of Rarotonga...' 1879 CIA. A copy of the original Raiatea code is preserved at the Mitchell Library. Summaries of all legislative provisions relating to land are attached as appendix A.

3 Unfortunately the vernacular version is not available, but the use of the word 'chief' in other parts of the law suggests that the original referred to ariki and not to all classes of chiefs.

There was no provision for disputes between lower ranks, or between commoners and titleholders.

The system of inheritance was not specifically laid down, though some provisions were included in the following rules:

Clause 10: The Widow and the Fatherless

> When the husband dies, if the widow be left with children they shall remain upon the land; but if she do evil and be found guilty three times she shall be removed.... If she marries again she shall also leave the land. Her children will remain, and the land be with them. If there be no children, the brother of the dead husband will take the land. If no relation be alive the land will go back to the chief or the Mataiapo, and remain with him.

Clause 14: About Wills

> When a person is dying let him make his will openly, in the presence of the Ariki, Judges, and many witnesses.... But if a man will a plantation to his friend, and his Ariki, or his Judge, or the authorities did not know of that will, it will be useless. This is the law of the will, and it is for the Ariki, the Judge, and the authorities to watch over it.

Clause 31 provided that every man had to plant food crops on penalty of a fine, but the nature and quantity of the crops were not defined. The custom of confiscating land for certain crimes was written into the law on 'House-burning' which provided that a person found guilty of this crime would be kept in irons for two years 'and his land be given to the owner of the burnt house'.[1] Confiscation was also provided for in cases where a man shifted his allegiance to another mataiapo or ariki and tried to retain control of the land while owing allegiance to the other chief.[2]

In 1896, with the guidance of the missionary Cullen, land laws were drawn up for Manihiki and Rakahanga.[3] This

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1 'Laws of Rarotonga...' 1879 clause 4.

2 Ibid. clause 11.

3 'Te Au Ture Enua i Manihiki' 1896 (The Land Laws of Manihiki). It is unlikely that this was the first law ever

was the only comprehensive land code adopted in the group during the period of mission influence. The introductory paragraph begins:

> There is always much trouble caused in the land on account of disputes as to land, and on account of disputes as to testaments of dying persons and also through land grabbing.

These laws were made at a meeting of the 'High Chiefs, Governors, Subchiefs and Chiefs and the three Land Courts of Manihiki'. For islands with a combined population of only 800 souls, this is indeed an extensive list of leaders, but none of them was specifically charged with the duty of executing the law. All disputes were to be taken to the ariki or the governor and the 'investigators under the law' (judges presumably, though this is not specified) were not to be consulted in the first instance.

Each of the islands had its own code, but relatively little is known of their precise nature, for, though references to them are numerous, no copies of most of them have been preserved.[1] There is no evidence to suggest that they contained detailed provisions with respect to land matters, and at least one of them, that of Mangaia, had no reference to land tenure beyond a clause dealing with boundary disputes.[2] Even the most comprehensive codes omitted provision for vital aspects of land tenure[3] and most of them dealt with only limited aspects of the system.

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3 (continued from previous page)
made relating to land in Manihiki and Rakahanga, though prior to that time the existence of chronic land disputes was evident - see e.g. Harris to LMS 2.8.1880 SSR; Hutchen to LMS 30.12.1895 SSL. These indicate that, if laws had been adopted earlier, they were not functioning effectively.

1 See appendix A.

2 'Laws of Mangaia' as at 1891.

3 The Manihiki-Rakahanga code, which was by far the most comprehensive, lacked provision for the land rights of adoptees, and adoption was a major cause of land disputes.

Of considerable importance also, and frequently of greater significance than the formal codes, were the informal rules and arrangements made by those in authority. For example in 1837 islanders who went aboard foreign ships forfeited their land rights as punishment.[1] In 1845 the chiefs of Rarotonga decided to forbid all sales of land.[2] While not provided for in the law, the first man convicted of murder after the introduction of the laws was chained to a peg for five years and 'the parties who obtained possession of his lands were bound to provide him with food and clothing'.[3] In 1849, the 'king and chiefs' of Mangaia made rules to provide for the control of wandering cattle.[4] On some islands church members were excommunicated for altering boundary marks,[5] and on Aitutaki church membership rose from 349 to 383 when those who had been 'suspended on account of land troubles' were readmitted.[6] In Aitutaki, too, Moss found that an informally constituted body was not only making rules, but levying fines for their infringement.[7]

The functioning of the laws

Of greater significance than the laws and rules themselves was the manner in which they operated in practice, for none of them ascribed clear roles to particular persons or groups, nor did they lay down adequate rules of procedure.

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1 Pitman to LMS 1.11.1837 SSL. It appears that this ruling was made to control the prostitution of women and the emigration of men.

2 Gill to LMS 18.6.1845 SSL.

3 Buzacott, Mission Life... 151.

4 Deeds Register, item 117 NLC.

5 Hutchen to LMS 16.2.1891 SSR.

6 Lawrence to LMS 18.12.1890 SSR.

7 Moss to Governor, October 1891 NZPP A3 1892.

To the extent that they did function, they were administered by the persons or groups who had most power in the society at any given time, and according to procedures adopted by those power groups.

In land matters the key figure in the power structure in most districts was the judge, one (or sometimes two) of whom was appointed at the time the laws were introduced. The initial appointments were in most cases made by the missionaries, though later ones were usually made by the local ariki.[1] Judges invariably belonged to the district or island over which they exercised their jurisdiction[2] and were either themselves ariki, or their younger brothers, or holders of titles immediately subordinate to those of the ariki.[3] Through his own land rights and his kinship bonds a judge was probably an interested party in many cases and would be obliged to support members of his own lineage against those of other lineages. Moreover, as he was either the ariki or a related chief appointed by the ariki it would generally be in his interests to support the higher rank orders rather than the lower, and the senior minor lineages rather than the junior ones.

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1 On Rarotonga the first judges were appointed by the missionaries themselves. - Pitman, Journal 19.9.1827. So far as can be ascertained subsequent appointments were made by the normal processes of inheritance, until in 1890 legislative provision was made requiring that in future judges would be appointed by the ariki of the district. - E Akamoni i te Au Ture 1890 (Law for Upholding the Law).

2 With the exception of Ngamaru Ariki, who held the post of Chief Judge of Avarua from 1898 until 1903. While not a Rarotongan, he was the husband of Makea Ariki of Avarua, as well as being an ariki of Atiu in his own right. - Ioi Karanga 17.12.1898.

3 For many years the Chief Judge of Atiu was the leading ariki, but when he took up permanent residence on Rarotonga he appointed leading mataiapo who were subordinate to him as Chief Judges. Tupe, the Chief Judge of Ngatangiia from 1827 to 1840, was the younger brother of Pa Ariki. From 1827 to 1898 the title of Chief Judge at Avarua was held by the holder of the Vakatini title, passing from father to son.

A feature which stands out clearly in this period is that land problems were least serious on islands with powerful hierarchical rank structures, and most acute on Aitutaki, Manihiki and Penrhyn, the three islands whose rank structures had been most seriously damaged in the course of their contact experiences.[1]

Within each of the three districts of Rarotonga, after the first decade of mission influence the ariki and judges had a degree of control sufficient to avoid the outbreak of open conflict, but serious interdistrict disputes continued until the middle of the nineteenth century.[2] Naval vessels called there more frequently than at any other island in the group, but on no occasion did the ariki ask for naval or any other form of foreign intervention (other than by missionaries) to control the people of their districts, or to determine land disputes within or between districts. In the Northern Group, on the other hand, naval commanders were frequently called on to adjudicate on land matters.

On Atiu, after the death of Rongomatane Ngaakaara, the ariki who led the conquest of Mauke and Mitiaro and who was in position of de facto authority over the whole island,

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1 On Aitutaki this was due to two factors: firstly, power in the indigenous society was diffused through a number of separate but equal chieftainships between which there was inadequate cohesion; and secondly, Reverend Henry Royle, who was in charge of the mission there from 1839 to 1876, was a man of powerful and autocratic personality who, unlike most of his fellow missionaries, chose to destroy the chiefly structure rather than work through it. On Penrhyn, where a similar diffusion of power existed, the situation was further complicated when slavers took away many of the chiefs and left the balance of power upset. Here again the dominant role was assumed by the resident missionary, a Rarotongan named Ngatikaro. On Manihiki the indigenous social order was typified by two groups between which there was considerable friction and jealousy, but neither of which was able to gain complete ascendency over the other; the balance of power was therefore liable to frequent disturbing fluctuations.

2 The laws appear to have been of little relevance in settling the serious interdistrict disputes which arose during the first twenty-five years of mission influence.

there was a period of tension and disputes over land between the three component tribes on the island. The fact that a law-code had been enacted,[1] and that further laws were adopted,[2] did little to alter the situation. However, by the 1860s Ngamaru Ariki had gained supremacy over the whole island, and no further land disputes are recorded. In Aitutaki, on the other hand, Reverend Lawrence found on his arrival in 1885 that 'the law book, the jail, the book containing the names of those convicted - all have gone and the people follow their own will'.[3] Despite his attempts to have a new code introduced, nothing had been done by 1887 and there was 'simply no law on the island, and even if we had there is no one with sufficient authority to enforce it. The consequence is that in all matters relating to land etc. the man with the most stubbornness is sure to have his way in the end. It matters nothing whether he is right or wrong'.[4]

In 1896 a Special Judicial Commissioner of the Western Pacific High Commission called at Manihiki to settle some outstanding land disputes. One of these was a complaint by Kairua to the effect that certain of his lands had been confiscated by the judge. Though the Island Council had already decided that the land undoubtedly belonged to Kairua, they had been unable to enforce their decision. In another case the Council had given a decision but it had been reversed by the missionary. The Commissioner upheld the Council's decisions in all cases but enjoined them to ensure

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1 Gill, Gems... 237.

2 Buzacott to LMS 18.8.1845 SSL.

3 Lawrence to LMS 7.12.1885 SSR.

4 Lawrence to LMS 17.1.1887 SSR. The same state of affairs still existed a decade later. - Lawrence to LMS 20.12.1897 SSL.

that they were put into effect in future.[1] The disorganized state of the authority structure was such, however, that the processes for settlement did not improve and unresolved land disputes remained a continued threat to the stability of the island's political organization.[2]

Conditions were no better on Penrhyn, where in the event of land disputes the law was 'put aside and nothing [was] done to prevent them fighting'.[3] One of the Penrhyn villages asked Chalmers to draft them a separate code from that used by the main village, and he did so accordingly.[4] Mangaia was in a marginal position, for as long as a centralized hierarchy of authority functioned land disputes lay dormant, but on the death of the 'king' who had exercised authority over the whole island, his title was split and land disputes burst out afresh.[5]

It has been indicated that where there was a clear-cut status hierarchy land disputes were contained and seldom developed into open conflict. But as the administration of the land laws was entirely in the hands of the top strata of the social order the institution of law-codes served to strengthen their position relative to that of the lower classes. The European missionaries generally succeeded in their attempts to contain disputes by centralizing judicial

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1 Hunter to High Commissioner 31.8.1896 and 10.9.1896 WPHC.

2 Te Karere September 1902.

3 Chalmers to LMS 4.7.1872 to 13.9.1872 SSJ.

4 Ibid.

5 It was the 'king's' power over the governors of the six districts that stopped disputes from developing to serious proportions. Both he and the mission realized that there would be disputes over succession to his title and that the new incumbent would not be recognized by all six districts. As expected serious land quarrels broke out very soon after his death and a disturbed political situation developed. - Harris to LMS 5.6.1879 SSL.

authority for each district or island, but were probably not aware of the degree of personal power which was thus vested in the executors of the law. Not being aware of the complexities of custom, they had of necessity left the judges with very wide discretionary powers. Moreover, with a weakening of traditional sanctions over them[1] and with no provision for appeal or other restraint in the introduced system, the judges became powerful indeed. Judge Tupe, who, in conjunction with Reverend Pitman, had tyrannized his district for thirteen years, was said to have had immense influence in land affairs.[2] As Judge Tupe was the brother of the ariki, chief executive for the mission, controller of the police force, and Chief Judge called on to decide issues which were not specified at law, this claim appears to be valid.

The law-codes themselves seem to have been of little consequence in determining the course of action taken in any particular circumstance. Though the codes were drafted under guidance and persuasion from the missionaries, their execution was generally a matter for the high chiefs and judges except on Aitutaki and Penrhyn, where the missionaries had assumed the de facto position of high chiefs and therefore had a considerable say in the execution of land laws. On the other islands, while the missionaries exerted considerable influence over the chiefs, their advice was only acted upon to the extent that the high

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1 It was no longer feasible to banish a chief for despotism, as had not infrequently occurred in the pre-contact era, and the leavening effect of the supernatural sanctions of the heathen priests was replaced by a new supernatural system which operated more directly through the people who administered the law.

2 Pitman to LMS 9.6.1840 SSL.

chiefs through whom the missionaries worked found it expedient to do so.[1]

In the rule about land disputes on Rarotonga, no principles were stated apart from the fact that 'the law' would decide.[2] One would assume that 'the law' referred to the judges, for they had been appointed to administer it, but this particular clause stated that all the chiefs of the island were to determine the issue. It is hardly conceivable that the individual chiefs would deliberate on lines other than those of tribal affiliation, especially in view of the fact that the law did not require them to recognize any particular principles, and it is accordingly not surprising that (before the time of the Protectorate) no example has been noticed of the chiefs functioning as a group to determine any intra-district land dispute, but rather the ariki and the judges invariably controlled such matters for their respective districts.

Protection and federation: 1888-98[3]

With the coming of the British Protectorate in 1888, the power of the high chiefs was reinforced by naval support.[4] The proclamation read at each island clearly stated that

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1 For example, on Rarotonga, shortly after the laws were adopted in 1827, Makea Ariki had a difference with the mission and remained aloof from its activities. The law in his district was accordingly disregarded until Makea's rapprochement in 1833 when 'the word of God became established...and the law of the island then became effective'. - Maretu, MS 136.

2 'Laws of Rarotonga' 1879 clause 5.

3 The Protectorate was declared over the inhabited islands of the Southern Group in 1888, and over all the remaining Cook Islands during the succeeding four years. The Protectorate lasted until 1901, but the direct administration of the group by New Zealand, though not provided for by statute until 1901, in fact began in 1898.

4 Previous to this time the principal actions taken by the navy in the group were to support European trading interests and discipline natives who interfered with them - see e.g. Lawrence to LMS 17.1.1887 SSR.

there would be no interference with the existing administration by the high chiefs.[1] The assembled peoples were told that the customs and laws of that day were to remain, and that foreigners as well as local people were to conform to them.[2] During the following decade various high chiefs reminded the British Resident and other foreigners of these assurances whenever their actions were questioned.[3]

No changes were made in the indigenous political structure until 1890. In that year Mr F.J. Moss, an ex-member of the New Zealand Parliament, was appointed as British Resident and took up his post at Rarotonga. He was specifically required to 'leave the natives in the possession of their existing rights of legislating for themselves, reserving to yourself a veto....'[4] Hitherto each of the islands (excepting Atiu, Mauke and Mitiaro) had functioned independently of the others, but in 1891 Moss formed a Federal Parliament for all the islands of the Southern Group.[5] The Parliament was composed of the various ariki and their nominees, but the executive consisted of the ariki alone.[6] The first Federal law provided that each island would remain self-governing in 'local matters'[7] -

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1 Bourke, Form of Proclamation 27.10.1888 CIA. While technically within the jurisdiction of the Western Pacific High Commission, the Commission was instructed not to interfere in administrative affairs in the group, though it was given a nominal judicial role. - Colonial Office to Governor 7.1.1895 CO 209 PRO.

2 Bourke to Admiralty 13.11.1888 CO 225 PRO.

3 E.g. see Moss to Governor 11.12.1893 NZPP A3 1894, and 25.4.1898 NZPP A3 1899.

4 Governor to Moss 25.2.1891 NZPP A1 1891. Moss informed the people of the Cook Islands accordingly. - Moss to Chiefs and People of the Cook Islands 22.4.1891 NZPP A3(a) 1891.

5 The jurisdiction of the British Resident and of the Federal Parliament was limited to the Southern Group.

6 The Resident acted as adviser to both bodies.

7 'A Law to Provide for the Good Government of the Cook Islands' 1891.

a term which in the particular circumstance included land tenure.

The first provision of any kind to apply to more than a single island was the 'Declaration as to Land', which was made by the Federal Parliament in 1894 for all the Southern Group and which purported to lay down 'the customs of the Maori in that matter from time immemorial to the present day'.[1] The declaration did not take the form of legislation, and noted that it was 'for each island to make its own laws' in this regard. Local councils were constituted on Aitutaki and Mangaia and laws for peace, order and good government were passed.[2] These made no specific reference to land tenure, but did provide for the appointment of judges and for hearings in open court.

Moss conducted an investigation of land matters in Aitutaki and found that disputes as to ownership were 'constant', usually as a result of adoptions or disputed wills.[3] Boundary disputes were also numerous.[4] He accordingly persuaded the Council to adopt a law 'to settle disputes about land',[5] but it merely provided that future disputes as to ownership or boundaries were to be heard by the island's three judges sitting together, rather than individually as they had done previously. As with the mission inspired laws of half a century earlier, no clear principles were specified. Whether the courts kept records, how many cases they heard, and how effective their

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1 'Declaration as to Land' 1894.

2 'Law for the Future Government of Mangaia' 1891; and 'A Law to Provide for the Good Government of Aitutaki' 1891.

3 Moss to Governor, October 1891 NZPP A3 1892.

4 Moss to Arikis and Governors and People of Aitutaki 28.9.1891 NZPP A3 1892.

5 '[Law] To Settle Disputes About Land' 1891.

jurisdiction was can only be guessed.[1] Moss thought that, as he had provided for the Aitutaki Council to be composed of elected members, and as the new Council had passed the new law and was made responsible for the appointment of the judges, he had transferred control over land matters from an hereditary chiefly hierarchy to a democratic body. However, an examination of the actual composition of the 'new' Council shows it to have been composed exclusively of ariki and other titleholders.[2]

On Aitutaki provision was made for appeals from the decisions of the judges to be heard by the Island Council.[3] On Rarotonga, while no appeal was provided for by way of legislation, the Island Council (which was controlled by the ariki) frequently spent a considerable amount of time deliberating on land disputes and issuing decisions on them.[4] In addition, the ariki had been given the power of pardon in respect of sentences imposed by district judges;[5] and a Supreme Court had been established with an ariki as its sole judge, with power to hear any case involving foreigners and natives, as well as all cases involving Federal law.[6] This legislation further strengthened the position of the ariki in Rarotonga, and in 1894 they were given legal

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1 Though one of the judges of Aitutaki reported that he had 'judged many land disputes', but that there were many still outstanding. - Judge Te Taura to Moss 10.12.1891 NZPP A3 1892.

2 The names of members are listed in 'A Law to Provide for the Good Government of Aitutaki' 1891. I am indebted to Mr Mokoenga Kavana for details of the rank status of the members. The Mangaia Council consisted solely of ariki and 'governors'. - 'Law for the Future Government of Mangaia' 1891.

3 '[Law] To Settle Disputes About Land' 1891.

4 E.g. Moss to Governor 19.7.1892 NZPP A6 1893.

5 'Power of Pardon Act' 1890.

6 'A Law to Establish a Supreme Court' 1891.

sanction for the control of all land matters, for a law was passed providing that after any land case had been heard by a judge, he was to 'send his judgement to the Ariki of the district, whose decision thereon would be final'.[1] This system of appeal and rehearing by the ariki, despite its informal basis, served to reinforce ariki control over land in Rarotonga, but no such system was introduced to other islands of the group.

Moss tried to interest the people of the Federation in a programme of land reform and hoped to create a society of peasant farmers, independent of obligations to their chiefs and kin. He proposed that the government should assume control of all lands and collect fixed cash rentals from each occupying family. The government would then pay those rentals to the chief under whose jurisdiction that land was held.[2] Sale or lease could only be negotiated through the government, which was to protect the rights of both chiefs and commoners.[3] Moss was afraid that what had happened in Hawaii and elsewhere, where the chiefs had irresponsibly alienated their lands, would happen in the Cook Islands also. However, while the matter was recommended to the Council of Ariki, he found that owing to the fact that they controlled the lands of Rarotonga, they were not anxious to 'give up the power which the present system gives to the owner of the land'.[4] Failing to achieve his aim, he later urged the chiefs of the whole Federation to allot to every family sufficient land on which to grow their

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1 'Land Occupants Act' 1894.

2 Te Torea 19.10.1895. This proposal was similar to the system prevailing in Tonga, which Moss considered appropriate for the Cook Islands.

3 Ibid.

4 Moss to Governor 18.11.1895 NZPP A3 1896.

food crops 'and a little coffee or other produce to sell'. This proposal would appear merely to have confirmed the existing situation, but he further proposed that the name of the family and of the land should be recorded by the respective Island Councils, and that the occupier should if possible commute the existing obligations to a cash rental.[1] The balance of the land, he assumed, belonged to the high chiefs, and he felt confident that in time they would be induced to make it available for lease.[2] None of these proposals was adopted.

At the time he assumed office, Moss had complained that under the then existing system each ariki followed or disregarded the laws of his island at pleasure.[3] The indications are, however, that the same situation applied at the time of Moss' departure from the island in 1898. Like the missionaries before him, he could only advise and persuade, for he had no compulsive power. In short, he could not have any significant effect on the actual balance of power in the society and accordingly although he could sometimes get legislation enacted, he could get it enforced only to the extent that it was acceptable to those who held the power in their hands. The Federal Parliament itself, which Moss had designed as a popularly elected body, was in fact invariably composed of appointees of the ariki and no election ever took place.[4] The actual functioning of the Parliament and of such land laws as it passed served merely to make chiefly power more effective.

The land laws initiated by the mission were instituted in order to reduce dispute and ensure more 'justice' by

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1 Te Torea 12.10.1895 and 19.10.1895.

2 Moss to Governor 18.11.1895 NZPP A3 1896.

3 Moss to Governor 17.1.1891 NZPP A3 1891.

4 Moss to Governor 17.10.1897 CO 209 PRO.

safeguarding the rights of the common people. Whether there was any overall reduction in disputes is not known. Such practices as warfare and the ritual plunder of land did not die out as a result of law-codes, in fact neither were mentioned in any code, and the extent of dispute has been shown to have depended not on the existence of such codes but on the unity and strength of the power hierarchy. In fact, the evidence suggests that a lack of land disputes was probably correlated with a minimum of 'justice' to the lower rank orders.

In his recommendations for modifications to land laws the British Resident aimed at security of tenure and increased productivity, but the most important of the reforms proposed by him (dealing with registered titles, rent commutation, and government control of land) were never adopted. Those which were adopted resulted in less security of tenure for commoners, though they may nevertheless have been a factor contributing to the increased production during the period, due to the increased chiefly power to organize and control production. This, however, was not the type of development which Moss had hoped to engender.

Chapter 9

THE NEW ROLE OF LAND

The production of surpluses

Prior to the advent of Europeans every man subsisted by the direct exploitation of land in which he held rights. Surpluses were produced for storage against the possibility of famine, for feasts and ceremonial, and for the prestige one gained by having ample supplies of food, but beyond this there is no indication of any incentive operating to engender the accumulation of large quantities of food or other material goods. As there was no product in general use which was not available in every district on each island, one's requirements were normally obtainable from land or water in which recognized rights were held.

As a result of contact with European culture, it became possible to subsist by other means than the direct exploitation of one's land rights, and consequently, to live without rights to land. Not many persons lived without some direct exercise of land rights, but among those who did were the pastors on islands other than their own, who were fed by their congregations, outer islands labourers on European plantations in Rarotonga, seamen on local schooners, and pearl-shell divers in Manihiki and Penrhyn who came from other islands.

There were also those who, in addition to subsistence production, took permanent or casual employment in cotton ginning, boat-building, labouring and other pursuits.[1] The

[1] Kelly, The South Sea Islands... 49.

more widespread pattern, however, was the supplementing of the consumption standards and prestige obtained from the lands in pre-European times either directly by the production of cash crops, or indirectly by the delegation of rights to those in need of land in return for a financial or other consideration.

The production of cash crops may be considered in two major categories according to motivation. Firstly there was production aimed at achieving divine grace and status within the church, for the most influential early contacts with European culture had been with missionaries who impressed on the natives the necessity for church buildings and offerings of saleable goods and money.[1] Throughout the period a considerable proportion of total production was contributed in kind or in cash to one church project or another.[2] A spirit of competition was maintained by the missionaries by announcing publicly the donations of each contributing group and individual,[3] and an old man who sold his only cow in order to buy a new Bible for each member of his household was held up as an example of the ideal churchman.[4]

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1 E.g. 'The State of the Society's funds I have not failed to lay before the people and urgently as possible pressed home upon their consciences a consideration of the subject...' - Pitman to LMS 23.9.1842 SSL.

2 There was extensive planting of arrowroot in Rarotonga in the 1840s and almost the whole crop was 'devoted to the service of God' - Pitman to LMS 3.7.1849; Mission pamphlets and the Bible were regularly sold for coconuts, arrowroot, dried bananas, and other produce - Buzacott, Mission Life... 207; for the eight years 1873 to 1880 Mangaia gave an average of $1017 per year in cash to the church as well as free services and gifts in kind - Harris to LMS 20.8.1881 SSR; in 1876 the people of Avarua spent £600 to £700 on repairs to their church - Lovett, James Chalmers... 116. This quite possibly constituted more than half their total cash income for the year.

3 Pitman to LMS 3.7.1849 SSL.

4 [Hutchen], 'Phases of Native Life...' 29.

Secondly, the land could be used for cash cropping with the aim of acquiring material goods for personal consumption. This aim, which was in competition with the pressure for funds by the church, served as an additional incentive to production. A part of this incentive was provided by the church itself through its insistence on the use of certain imported commodities, and particularly on the wearing of imported cloth,[1] a commodity which was consequently the largest single item of trade throughout the period.[2]

A further incentive was provided by a demand for certain consumers durables, the possession of which was considered essential to the maintenance of social status. Until the 1850s, houses and furniture in the European style were popular with the leading families, in the 1880s sewing machines became a must in every household, and by 1890 buggies were de rigeur for chiefs of standing. Whereas in the early stages the bulk of non-subsistence production had been devoted to church activity, as time went on an increasing proportion was devoted to the acquisition of material goods. The scale of consumption on ceremonial occasions in particular seems to have increased markedly.[3]

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1 Those who did not wear imported cloth were not considered eligible for baptism. - Maretu, MS 73.

2 While there is no statistical verification before 1880, the proportions of various articles paid in particular dealings show a high preponderance of cloth. For example, a whaler in 1837 bought 45 pigs for four to eight yards of blue cotton cloth per pig, 8 dozen fowls and ducks at six yards of cloth per dozen, and only for the smaller items of fruits and vegetables did they pay in 'beads, toilet glasses, scissors, jewsharps, and fancy calico...' - Putnam, Salem Vessels and Their Voyages 4:137.

3 For a wedding in 1904, for example, the presents given included 188 mats, approximately 5390 yards of cotton prints, 3500 yards of calico, 7 rolls of native tapa cloth, 70 dresses (some of silk and others of lace), 1 goat, 1 cow, 65 pigs, a clock, a Bible, a hymn book and £23.10.3 in cash. The total cash value was probably equal to more than 50 times the average annual per capita income of the island.

Changes in production patterns

The relative importance of particular crops and particular soil types changed in response to new techniques and the needs of the developing market. The introduction of the spade, the hoe and the plough made the production of field crops very much easier, and the axe and the horse facilitated clearing operations. There are clear indications of a shift in emphasis from swamp taro in favour of garden crops. Three factors seem to have been responsible: firstly, whereas the new implements facilitated an increase in output of garden crops per unit of labour, they had little or no effect on taro cultivation where the digging stick remained the most useful implement; secondly, while there was a keen demand for kumara and arrowroot for the providore trade, there was little demand for taro due to its poor keeping qualities; and thirdly, the introduction of cats led to a rapid decline in the number of land birds, and this was considered responsible for the increased depredations of the taro-eating caterpillar.

It may be assumed that the reduced amount of time necessary to produce a given quantity of food resulted in increased production to the extent of the available market. Ships calling for supplies seem always to have fulfilled their requirements, and at prices which compared favourably with those obtaining in Tahiti and Tonga. But the demand for fresh foods was decidedly limited and the people must soon have found the point beyond which additional production could not be marketed. While the providore trade at Rarotonga was considerable and fairly regular between 1835 and 1855, that at the smaller islands was erratic and unpredictable, and can hardly have been conducive to maximizing output.

Until the mid-1850s the bulk of trade was in fresh foods which were sold to passing whalers and other vessels as ships stores.[1] After that time, however, the relative importance of non-perishables increased. The first of these, cotton, was originally introduced by the mission as a household crop for domestic use, but it soon became an article of trade for export. Coffee was also introduced, and its production expanded after the providore trade died away. From 1862 onwards regular shipments of perishable fruits, principally oranges, were exported to New Zealand.[2] Like most others, this crop was first established in Rarotonga, whence it spread to the outer islands.[3]

These export crops took longer to grow, needed to be grown in larger quantities, and necessitated techniques of cultivation and processing with which the people were unfamiliar. There is no evidence of large-scale planting of oranges or coffee, in fact the great bulk of the trees were self-propagated.[4] While cotton was widely planted in small plots it was only on Rarotonga after 1880 that any large plantations were established, and these by Europeans using immigrants from the outer islands as labour.

The ownership of the introduced crops was dealt with according to existing indigenous concepts of ownership of plants by the planter, and there is no evidence of any new

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1 For details of the particular crops and livestock traded at the various islands, together with an indication of prices and quantities see Weekly Alta California 16.11.1850.

2 By 1865, ten to fifteen cargoes of oranges were being shipped to New Zealand from Rarotonga annually. - Krause to Governor 6.11.1865 TBC. The banana trade did not develop until the 1880s.

3 The introduction of oranges to the Cook Islands is credited to the 'Bounty' in 1789. - Maretu, MS 12. The first known cargo of fruit exported was shipped from Aitutaki in 1852 for California. - Lamont, Wild Life among the Pacific Islanders 99.

4 Moss to Governor 17.1.1891 NZPP A3 1891.

tenure forms being adopted by the islanders as a result of these introductions, or as a result of the new cash value of some of the indigenous products.

The attractions of cash cropping were never sufficient to induce the full utilization of the land and one of the least biased reporters noted that the proportion of arable land under active cultivation was 'quite insignificant. Even the cultivations of the natives - their orange groves and coffee plantations, their banana and taro patches - are either part and parcel of the forest or are almost overshadowed by it'.[1]

This state of affairs may be partly explained by the drop in population, the limited market for fresh foods and the inadequacy of storage and shipping facilities for non-perishable crops. An even more important consideration, however, appears to have been that there was no marked change in the standards of subsistence consumption of the great majority of the people. With the possible exception of expenditure on imported cloth, most of the income received was spent on annual donations to the church, the acquisition of status goods, and ceremonial. The satisfaction of these needs was conducive to periodic spurts of production for particular occasions rather than to a steady continuous output to meet increased day-to-day costs. Market limitations were not the only deterrent to over-production, for the energetic were vulnerable not only to claims for atinga from above, but to obligations to share and to assist their kin. Nor was it considered proper for the lower social orders to outdo their superiors in standards of housing, ceremonial or other consumption.

Thus, while the developing market was responsible for in increase in per capita output of agricultural produce,

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[1] Cheeseman, TLS 264.

it did not lead to the commercial exploitation of all the land available, nor to maximum productivity from such land as was used. The extent to which the additional time that the new tools made available was put into increased output cannot be determined, but much of it was taken up in church activities, some in the erection of coral lime houses, and some in a great increase of travelling parties which paid visits from one island to another, often remaining for months at a time.

The introduction of new livestock was not on a sufficiently large scale to engender special provisions in the tenure system, though it did result in increased difficulties in the control of wandering stock. Despite the erection of a considerable amount of fencing, there are indications that the ravages of wandering stock acted as a disincentive to production.[1] Apart from new types of poultry, the main additions were cattle for beef, horses for transport and draught work, and goats for eating.[2] None of these have multiplied greatly, and while only very few people ever kept cattle or goats, a high percentage of families owned a horse or two.

In the matter of work organization, one minor change occurred in production for religious purposes, as in some instances land was cleared, planted and harvested by the whole tribe in order to raise church funds.[3] So far as is

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1 See, for example, instructions issued by the chiefs of Mangaia 19.11.1849 CIA; Chace and Turner to Wesleyan Missionary Society 26.3.1841 SSL.

2 Sheep were also introduced, but did not survive for long.

3 Te Puna Vai Rarotonga 2:22-3. There were three groups in each district, one for the men, one for the women and one for the Sunday School children. Each group worked as a unit, and planted its section of land collectively. The men's group was usually led by the high chief and the women's group by his wife.

known, agriculture was never undertaken on a tribal basis in the pre-contact era. The new pattern does not, however, seem to have become a widespread practice, and it had ceased by the end of the century. The fact that the chiefs organized the collection of produce for the church probably caused little change, for they had previously had similar powers to organize the accumulation of produce for tribal religious activities.

The leasing and lending of land

The most lucrative indirect method of exploiting one's land rights was by transferring some portion of them to foreigners, usually by way of lease. By January 1899 the annual income to native owners from registered leases of land to foreigners was £502.10.0.[1] Of this amount, some £445.16.0 was in respect of land on Rarotonga. In addition to the cash there must be added the value of rentals in goods,[2] of commitments in addition to the fixed rent,[3] and rentals payable in the form of a proportion of the proceeds from the land rented,[4] or of improvements to the land.[5]

Alternatively, land rights could be exploited by allowing unrelated natives to settle on unused lands. To

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1 In fact many of the rentals were fixed in Chilean dollars, the exchange rate for which fluctuated around $10 to the £1. This exchange rate has been used to convert all rentals to pounds sterling.

2 Deed no.83 covered the lease of a section of land from Tinomana Ariki to Ah Chin for one pig per year. - Deeds Register NLC.

3 Deed no.159 provided that the lessee of land at Aitutaki had to pay a cash rental of $30 per annum as well as to care for the native owners 'and give them food and also for their grandchildren'. - Deeds Register NLC.

4 Deed no.29 in respect of Tutakimoa plantation for coffee and orange growing made such a provision. - Deeds Register NLC.

5 Deed no.134 provided that the lessor was to get possession after 25 years of a house to be built by the lessee. - Deeds Register NLC.

Rarotonga particularly came an influx of people without land rights there, and without kinship bonds to link them with the Rarotonga people. Apart from a handful who worked for European planters or traders, all native immigrants were dependent on land for their subsistence, though they had no land rights on the island. Not one native acquired a formal lease or other legal title to land,[1] and apart from those who acquired rights by marriage, the visitors merely entered into informal arrangements with local chiefs to reside and plant under a system of permissive occupation. Such tenancy at will was not only insecure, but, as demands for atinga were dependent on ability to pay, there was a direct disincentive to surplus production. Moreover, such use-rights did not carry the right to plant long-term crops.

The status of women

The status of women improved as a result of mission influence and a surplus of males, and in Rarotonga in 1845, the Makea Ariki title passed to a woman - the sister of the deceased.[2] She was the wife of Rio, one of the original Tahitian teachers and she lived at the mission headquarters where she was held in high esteem.[3] This was the first occasion on which a woman had held a rank title or exercised the land rights concomitant with it. No legislative provision was made to accommodate this change of custom but, once the precedent was established, women came to assume a small but increasing number of titles on Rarotonga and on some, but not all, of the outer islands. It is noticeable that women held ariki titles much more frequently than they held

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1 An examination of the Deeds Register shows that at this period no leases had been made in favour of islanders.

2 The previous ariki had no born children.

3 Mrs Buzacott, MS 8.

lesser titles, and that on some islands - such as Mangaia and the atolls - all rank titles were still at that stage invariably reserved for men. Even on those islands where women did come to hold titles, they seldom acquired them on the same criteria as men. The dominant pattern was still for the title to pass to the eldest resident son, and, with rare exceptions, titles passed to daughters only when there were no eligible sons.[1]

Prior to her death in 1857, Makea Te Vaerua made her will and 'contrary to precedent gave large portions of land to the younger branches of the family'.[2] This again was the first instance in the group of a woman exercising those powers of devise over land which were a concomitant of chiefly status.

Differentiation of the social classes

These new means of exploitation of land rights were not available equally to all members of the population, but, due to the particular circumstances obtaining in the nineteenth century, distinctly favoured the upper stratum of the society. The admission of strangers had always been the prerogative of the ariki, and it was accordingly they who controlled the leasing of land to foreigners.[3] In consequence, many of the lands they leased belonged not to them but to particular descent groups within their tribes.[4]

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1 In other words, the ideal of father to son succession remained, but whereas previously in the event of there being no sons the title passed to the senior resident agnatic male relative, it now sometimes went to a daughter instead, as exemplified by the Ngati Te Ora genealogy shown in appendix B.

2 Mrs Buzacott, MS 9.

3 Some ariki went so far as to forbid their subjects from entering into any negotiations about land with foreigners without prior approval - e.g. Ioi Karanga 16.4.1898.

4 Owing to limited descriptions it was found possible to trace only 45 of the pre-1899 leases to the later Land

In the initial stages this was simply a case of ariki signing the leases in the capacity of titular head of the tribe on behalf of the owning descent group. But all too frequently, by the time the lease expired, the ariki regarded the lands concerned as his own and not infrequently cited the fact of the lease in his name as 'proof' of ownership. Moreover, in the last two decades of the century, there were instances of ariki leasing lands without the knowledge of the owning descent groups and others of their forcing leases in the face of strong opposition from the owners, and in a few extreme cases native occupiers were evicted to make way for more remunerative occupation by foreigners.

Rental from leases became a major source of income for the ariki, and of the total annual rental income of £502.10.0 from registered leases in 1899, £404.0.0 went to ariki, £10 to mataiapo, £33 to rangatira, £30 to 'the Government of Aitutaki', and £25.10.0 to persons whose rank is not known. The amount of income from unregistered leases and other informal arrangements is not known, but from the above leases alone each Rarotonga ariki derived an average of £64.2.8 - a not inconsiderable sum in relation to per capita

4 (continued from previous page)
Court investigations of ownership. Of these 45, some 39 were leases by ariki. In 20 of these cases the Court investigation showed that the ariki had no proprietary right to the land concerned, in 13 cases the ariki was found to be one rightholder among others, and in 6 cases ownership was awarded to the ariki alone. Of these 6 cases, however, 3 were lands which were vested by the time of investigation in either religious bodies or the Crown and whose ownership was accordingly never proven, 2 were lands awarded to the ariki for a life interest only pending full investigation (which has never been carried out) and in the one remaining case the ariki was shown to be sole owner of the land concerned. Of the 6 instances of lease by persons below ariki status, Court investigation showed that all lessors were either sole or part owners of the land concerned.

income from agriculture, which was then just under £3 per annum.[1]

Many of the lands leased were those whose owners had either died or gone away. The motivation for leasing such lands cannot have been wholly mercenary, for it was the customary duty of the ariki to accommodate strangers, and they were under constant pressure not only from the potential lessors but also from the British Consul and later the British Resident. In the Avarua district of Rarotonga, where the number of foreigners was largest and the pressure to lease was greatest, the ariki must frequently have been embarrassed by conflicting obligations to visitors as against tribesmen. Nevertheless, the need to meet the requirements of visitors was at times used as a rationale to take land from those descent groups which were out of favour.

The granting of permissive occupation to outsiders was likewise the prerogative of the higher rank orders, and as the newcomers (mostly immigrants from other islands) were given no security of tenure they were vulnerable to excessive demands for labour and tribute from their hosts. This is not to suggest that they were maliciously exploited, in fact Maori tenets of hospitality probably made it obligatory for a chief to grant to any stranger who requested it the right to build himself a house on that chief's land. Some of the immigrants married into the lineages whose lands they were using and thus acquired a more secure right for themselves and their children. Nevertheless, the great majority lacked security and bargaining power, for their continued residence was dependent on continued good relations

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[1] In addition to rentals some ariki collected harbour dues from vessels using reef passages in their districts. - MB 19:173-4 NLC.

with their hosts, and apart from the land there were few alternative sources of income and subsistence.

Some observers have blamed the ariki for not granting leases to these strangers from neighbouring islands who settled on their lands, but it is most unlikely that many, if any, islanders would have wanted this form of tenure in any case. Even if the people had been familiar with it, the ariki made the laws and to a large extent administered them, and it is doubtful if a lease would have given any greater security than did residence at the pleasure of the ariki. Had cash rentals been charged on the scale paid by foreigners, relatively few islanders could have afforded them. Moreover, in Maori eyes, for a commoner to ask an ariki for a signed guarantee of tenure would probably have appeared as a gross insult. The relationship established by permissive occupation was a reciprocal and flexible one wherein the chief provided means for the sustenance of the visitor, who in return assisted the chief with produce and labour at appropriate times.

In effect what happened on Rarotonga during the latter part of the century was that the right-holders lost in the early decades of the century by disease and emigration were to some extent replaced by the influx of immigrants who were quite without rights. The number wanting permission to reside was considerable, and the number of chiefs in a position to grant that permission relatively few; the need of the immigrant was greater than that of the chief, and consequently one's continued residence was best secured by generous giving and liberal assistance with work.

In pre-contact times, the common people were the relatives of the chiefs, and had particular rights to particular portions of land. The lineage gained strength and status as its numbers increased, and it was accordingly in the interests

of the lineage head to make land available to those who wished to use it; he could not exploit it in any other way. Furthermore, as the lineage functioned for many purposes as a single unit, what was in his interests was generally also in theirs. Once produce acquired a cash value, however, the land on which it grew acquired a capital value and, due to the range of consumer goods now available, what was in the chief's best interests was much less often in the common interests of the group.

The ability of any man with available land to produce crops for sale or export may suggest increased individual choice. However, this was limited in practice by the organization of the market houses which provided a channel through which the chiefs could exercise control over the production and sale of cash crops. These market houses were set up originally by the missionaries to assist and regularize trade. In the Southern Group, one such market house was set up on each island.[1] In those islands where there was tension between districts this arrangement tended to produce difficulties, and in Rarotonga and Aitutaki - where trade was greatest and reef passages most numerous - the original scheme broke down and various districts established their own market houses.

Each market house was controlled by the local ariki, who made regulations for the conduct of the market and fixed the prices to be paid for each commodity. A copy of the regulations and prices of the Avarua market house as at 1849 shows how the trade was organized and shared between the various landholding groups.[2] Each of the six major

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1 Market houses of this type were not reported from the northern islands, probably as the volume of trade did not merit their erection.

2 The Market House... 1849.

lineages within the tribe was to supply equal quantities of produce, and the chief of each was to handle sales and purchases for his group. Overall control of the market was exercised by Makea Ariki, and he or his appointee stayed with the captain of the providoring ship throughout the whole operation. This new role as intermediaries in trade gave the leading chiefs not only additional power, but also additional income, for their control extended to the distribution of proceeds from the market.[1]

Another important technique used by the high chiefs to monopolize the export of produce was the application of the ancient customary prohibition or ra'ui to cash crops.[2] When an ariki placed a ra'ui on a crop of his district, it was forbidden for any person, including the person who had planted it and on whose land it grew, to harvest the crop until the ra'ui was lifted. A contract was then let by the ariki to the trader who made the most advantageous offer for the whole crop of the district.[3] While the system probably originated to ensure the best possible price for produce, it also gave an unscrupulous ariki the opportunity

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1 The laws of Rarotonga provided that: '3. Chiefs are not to take the best pieces of cloth for their own use. Let them have a share and the people a share also. But if money only be paid by the captain it is right it should go to the chief. 4. ...The person in charge of the market [i.e. the chief] is the proper one to take all things and deal with them...and the police are to take into custody any who do not obey these authorities.' - 'Laws of Rarotonga...' 1879 clause 22.
Commander Bourke found this chiefly monopoly on trade still operating throughout the group in 1888, but warned the chiefs that it was not in accordance with British traditions of trade. - Bourke to Admiralty 13.11.1888 CO 225 PRO.

2 The ra'ui was also sometimes used as a sanction forbidding the planter the right to harvest his crop - see, e.g. Hamilton Hunter to High Commissioner 10.9.1896 WPHC.

3 As from 1898 it became common for the ariki to advertise their ra'ui and the successful tenderer for the crop. - Cook Islands Gazette, passim.

to turn the system to his own advantage.[1] In 1891 this system of ra'ui of cash crops was given the sanction of law.[2] The principal function of the ra'ui in the subsistence economy had been to preserve supplies for future consumption, but as the commodities concerned were perishable, all partook of them and the chief could consume no greater quantity than the commoner - though the most prized portions were undoubtedly the prerogative of the chief. But in a money economy the chief could utilize a greater proportion of the proceeds and the ra'ui was at times used as a restrictive practice functioning to increase his income.

In addition to the ra'ui, some high chiefs had forbidden their subjects to deal with European traders except through them, or with their permission.[3] This system was ostensibly instituted to prevent or limit indebtedness, but it was open to manipulation. Moreover, during the 1890s many of the tribes owned ships which were invariably controlled by their respective high chiefs, and as these ships carried much of the produce exported from the islands the ariki thus acquired additional controls over marketing.

The increased centralization of authority in the hands of the high chiefs led to a de facto increase in their rights relative to those of the commoners. Towards the end of the century the view became widely accepted on some islands that the chiefs had absolute power over the land,

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1 Sometimes the crop had to be sold through the ariki to the trader concerned. - Exham to High Commissioner 1.9.1890 FO 58 PRO. An example of exploitation by the chief who imposed the ra'ui is quoted in Te Torea 9.10.1897.

2 Provision was made for the ra'ui of crops by the Au (of which the ariki was head) but subject to the approval of the Resident. -'[Law] For Electing the Au' 1891. It is doubtful whether this approval was sought in fact.

3 Though this practice was specifically outlawed by the 'Statute of Atiu, Mauke and Mitiaro' 1899.

and that the lower rank orders were merely occupiers at their pleasure.[1] This was particularly so in Avarua district where the number of immigrants, both native and foreign, was greatest, and where the commercial value of land was at its highest. The view of the chiefs as absolute owners was not held only by the foreigners, for there are clear indications from their words and actions that some of the leading chiefs were of that opinion too.[2]

On Rarotonga particularly the tenure of lands held by commoners became increasingly less secure. Some were deprived of their lands in order that they might be leased to foreigners,[3] others were evicted for minor breaches of courtesy which did not constitute breaches of law,[4] and not infrequently even holders of the lesser titles found themselves turned off their lands on apparently insignificant pretexts.[5] There was a marked increase in the volume of

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1 This view was particularly prevalent on Rarotonga, Atiu and Mauke. Many European observers noted an apparent difference between the 'family' ownership on Aitutaki and Mangaia and the 'chiefly' ownership on the other islands - e.g. Bourke to Admiralty 13.11.1888 CO 225 PRO. While the use of the term 'ownership' in this context was perhaps imprecise the different degree of authority over land which was vested in high chiefs as against family heads is clear.

2 E.g. in 1895 Tinomana Ariki claimed that all the lands of untitled persons were given them by their chiefs, and that those who disobeyed her instructions would be made to 'restore' the lands they were using to the chief. - Te Torea 18.5.1895. By 1900 the same ariki was claiming the whole lime crop in her district as her personal property. - Ioi Karanga 17.3.1900. In 1903 Ngamaru Ariki gave the island of Takutea, which he claimed as his exclusive property, to the Crown, but later Land Court investigation showed that his rights in the island were marginal only.

3 E.g. Wyatt Gill to LMS 28.10.1882.

4 E.g. Te Torea 25.5.1895.

5 E.g. in 1896 Kainuku Ariki was reported as having 'driven away a portion of his relatives from their houses and lands which they claim from their forefathers'. - Te Torea 21.3.1896. In 1897 Tinomana threatened eviction for any person who disregarded her ra'ui. - Te Torea 24.4.1897. Land Court records contain many examples of commoners and holders of minor titles being turned off their lands, e.g.

tribute supplied by the lower social orders.[1] The end of the nineteenth century marked the peak of chiefly power over land in the group.

The impact of European culture during this century served to further differentiate the social classes, and to emphasize class stratification rather than the segmented aspect of the society which had hitherto been the more pronounced. It also resulted in a higher level and range of consumption. But, with the exception of the holding of rank titles by women and the abolition of the acquisition of land by warfare and ritual plunder, there was little change in the various customs relating to the tenure of land. However, in view of the vastly different context within which those customs operated, there was a considerable change in the relative incidence of various customary processes, and of their function in the operation of the society.

5 (continued from previous page)
MB 4:81 and 4:116 NLC. Moreover, many of the older generation today speak freely of this period as the time of the mana ariki or chiefly power, when discipline was severe and subservience mandatory.

1 E.g. MB 19:163-4 NLC; Harris to LMS July 1882 SSR.

P A R T T H R E E

THE LAND COURT: ITS FORM, FUNCTION AND EFFECTS

Chapter 10

THE ESTABLISHMENT OF THE LAND COURT

A shift in the balance of power

In 1897 chiefly power over land was at its height; but so long as the exercise of this power did not interfere unduly with New Zealand ambitions in the group it was tolerated, and even actively supported. Time was on New Zealand's side, for the islanders were thought to be dying out, and even they themselves appear to have been convinced that their extinction was 'a foregoine conclusion'.[1] It is true that the Prime Minister considered that under the Protectorate system New Zealand was not gaining sufficient return in trade[2] but his attempts to annex the group were thwarted by the Colonial Office.[3] In 1896, when the Colonial Office was prepared to consider annexation by New Zealand under certain conditions, the Governor of New Zealand, who was the channel of communication, did not convey the information to the government as he feared their motives for wishing to assume responsibility for the group.[4]

The Protectorate functioned satisfactorily enough while the local authorities concurred in the more important proposals of the Resident, and so long as their interaction was mutually advantageous. During 1897, however, the

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1 Moss, Fortnightly Review 54:776.

2 Seddon to Governor 24.7.1894 CO 209 PRO.

3 File CO 209 1894-8 passim PRO.

4 Governor to Colonial Office 16.7.1896 CO 209 PRO.

Resident drafted a bill for the local parliament, creating a court which was to have exclusive jurisdiction over cases in which foreigners were involved, and which was to act as a court of appeal from the ariki courts. The Resident proposed that he himself should be its Chief Judge. The effect of the bill would have been to subordinate the powers of the ariki to those of the Resident, and to free foreigners from the jurisdiction of the local courts.

While only judicial power was ostensibly in question, the ariki had found that the control of the courts was a powerful adjunct to political and economic power as well, and interpreted the proposal as 'taking all our power and giving it to the British Resident'.[1] According to some sources the chiefs had been led to believe that if they passed the bill it would leave the way open for their losing not only all their authority but also their lands.[2] The ultimate sanction of chiefly power lay in the degree of chiefly control over the major source of subsistence and income: the land. The power to evict transgressors and to accommodate co-operative squatters was vital to the retention of their position. Members of the local parliament were nominated by the ariki and, 'holding their land at the will of the said arikis', were allegedly compelled to acquiesce to their proposals.[3]

When the parliament refused to pass the bill, Moss panicked and threatened to 'take matters up with the Queen'. He dissolved the parliament and the ariki petitioned the Governor for his removal.[4] The Governor requested the Chief

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1 Minutes of Enquiry held before Sir James Prendergast 28.12.1897 NZPP A3 1898.

2 Moss to Hutchen 15.9.1897 NZPP A3 1898.

3 Moss' public statement of 29.9.1897 NZPP A3 1898.

4 Petition of Makea, Pa, Karika, Kainuku, Tinomana and Ngamaru to Governor 7.9.1897 NZPP A3 1898.

Judicial Commissioner of the Western Pacific High Commission to proceed to the Cook Islands by warship and investigate the matter.[1] When the Commissioner stated his preference for travelling by passenger vessel neither the Governor nor the Prime Minister concurred, both considering that a warship was essential for 'moral effect', and Sir James Prendergast, the Chief Justice of New Zealand, was sent instead.[2]

Sir James realized that the system of land tenure, whereby commoners could be evicted at will by the high chiefs, was incompatible with an elective democracy, and that the chiefs would be most reluctant to relinquish the mana they had as 'landowners'.[3] Prendergast's enquiry can hardly be described as impartial, for before the enquiry began he publicly reiterated New Zealand's confidence in Moss, and expressed displeasure at the fact that Moss' advice over the court bill had not been heeded. He thereupon called on the Members of Parliament to explain why they had refused to pass the bill.[4] Under interrogation from the Chief Justice, with a warship lying at anchor awaiting his deliberations, knowing that Malietoa, Mataafa and other Samoan chiefs had been banished by the Germans for displeasing their government, knowing also the consequences of the Maori wars in New Zealand for the 'recalcitrant' tribes, and the price paid by the Society Islanders for opposing the French, the chiefs claimed that they had not refused the bill, but merely wished for time to consider it.[5]

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1 Governor to Colonial Office 23.10.1897 CO 209 PRO.

2 Governor to Colonial Office 7.12.1897 CO 209 PRO.

3 Prendergast to Governor 24.1.1898 NZPP A3 1898.

4 Minutes of Enquiry... NZPP A3 1898.

5 With the frequent shipping connections and travel between the Cook Islands and neighbouring groups, visitors between

As a result of the enquiry Moss was withdrawn and replaced by Colonel W.E. Gudgeon, a man of martial bearing who had won distinction in the wars against the Maoris of New Zealand, and believed that 'stern authority' was essential in dealings with Polynesians. He had been Resident Magistrate in two Maori districts and had served for several years as a judge of the Native Land Court of New Zealand. Gudgeon arrived by man-o'-war and was formally introduced at a full dress parade at which the naval commander read a proclamation declaring that Her Majesty Queen Victoria had 'learned with much displeasure of their refusal to obey her wishes in regard to the enactment of the Federal Court Bill'.[1] The chiefs were warned of the consequences of any similar action in the future.

The High Court Bill was passed without question, Makea Ariki sent an abject apology to the Queen,[2] and the political power in the island was effectively transferred to the Resident. What the average islander thought about these proceedings is difficult to say. The struggle for power was between the ariki and the Europeans and both claimed to be supported by and representing the interests of the common villager. But as the sources of information are derived principally from one or other of the interested parties

5 (continued from previous page)
them came and went. For example, a sister of the exiled Malietoa was living in Rarotonga, whence she maintained a correspondence with her brother - Correspondence of Rafala Maoate to Malietoa ATL; in 1864 two New Zealand Maori chiefs had been to Rarotonga seeking land on which to resettle their tribes - Krause to LMS 9.9.1864 SSL; and on several occasions parties from Raiatea and other Society Islands had come to Rarotonga in an attempt to enlist aid in their troubles with the French. It was thus not without reason that Makea was 'concerned at a rumour that she was to be deported and the islands annexed' - Prendergast to Governor 24.1.1898 NZPP A3 1898.

1 Proclamation of the Governor 26.8.1898 NZPP A3 1899.

2 Makea Ariki to Governor 13.9.1898 CO 209 PRO.

(principally the European) and but little from the people affected, this must remain to some extent a matter of speculation. What is clear is that the common man did not participate in the struggle, and was probably but little aware at this stage of precisely what was going on.

Effects on land tenure were immediate. One of the first moves was the passing of 'an act to secure uniformity in leases and security of tenure to foreign lessees'.[1] This act applied throughout the Federation (i.e. all the islands of the Southern Group) and was the first enactment relating to land to apply to more than a single island. Despite its wide application, its functions were confined almost exclusively to Rarotonga, and the administration of the act was made the responsibility of a Land Board which consisted of the Resident and the five ariki of Rarotonga.[2] In addition, any mataiapo was entitled to a seat on the Board for such time as any matter relating to lands in his tapere was being discussed.

To qualify for registration a lease had to have the approval of the Resident and at least three of the ariki. The Board was entitled to stipulate conditions for leases, and no land could be leased to a foreigner if it was in the beneficial occupation of a native of the island concerned, or if a Maori had been ejected in order that the land might be leased. All leases had to be accompanied by survey plans, and had to specify the rental and term of the lease. The Board met on various occasions to consider leases: a few were modified, but only one or two were ever declined.

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1 Sub-title of 'The Land Act' 1899. Summaries of all legislation referred to are contained in appendix A.

2 At present there are six recognized ariki on the island, but at that time Vakatini was not recognized as one.

One clause, apparently drafted by Colonel Gudgeon, read:

> And whereas a large proportion of the best land in the island of Rarotonga is not in the beneficial occupation of any person and such land does not in any way add to the wealth or revenue of the island. And whereas there are a large number of persons of the Maori race in this island who have no land rights and who will never become producers unless fixity of tenure be given to them, it shall therefore be the duty of the Board to consider the means whereby land on perpetual lease may be secured to all of the deserving members of the native-born Rarotongans.[1]

With the power over tribal lands still vested in chiefly hands (and that power based to a considerable extent on the ultimate sanction of expulsion from the land) one could hardly expect that such a body would so openly invite a major reduction in power. No action appears to have been taken on this clause.

In the same year an act was passed giving increased powers to the Au (informally consituted district councils of elders, headed by the ariki). Among other things they were given power to require the planting of coconut trees by all people in their respective districts, to 'report to the chief of the Government' those persons who did not adequately utilize their lands, to impound wandering stock, to levy dog-tax, and to place the lands of the districts under ra'ui in order to minimize theft and permit bulk sale of product.[2] Under local ordinances which were enacted by the Federal Parliament for the outer islands, local judges were made responsible for the settling of land disputes, though if either party wished to do so they could have their cases heard by the High Court (of which the Resident was Judge) instead. Provision was also made for

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1 'The Land Act' 1899 clause 18.

2 'Au Empowering Act' 1899. This act extended and clarified the powers given to the Au under the '[Act] For electing the Au' of 1891.

appeal from decisions of the local courts.[1] In Aitutaki, however, all land disputes had to be heard by the European Resident Magistrate based at that island.[2]

A start in the direction of introducing land taxes was made with the passage of a law which provided that land occupied by foreigners was to be subject to a tax of one shilling in the pound of its rental value as a tax towards the execution of public works.[3] Maoris were not to be taxed in cash, but instead were to provide labour for public projects.

Annexation and the creation of a Land Court

Securing the passage of legislation was relatively easy, for the chiefs had learned the consequences of declining it, but having unpalatable legislation implemented in practice was much more difficult. Gudgeon could not at this stage force action which might antagonize the chiefs, for the Colonial Office would not consider annexation to New Zealand unless it was supported by the chiefs and, as Gudgeon said of himself:

> I came here with the fixed intention of getting this group annexed; but on my arrival I found that the friends of Mr. Moss had made a bugbear of annexation...hence it was that for a long time I was very quiet, for it was absolutely necessary that I should gain the confidence of the arikis, and secondly that the Moss party should have no inkling of my real views, lest they should turn round and warn the Maoris that they were about to lose their mana.[4]

He did not inform the ariki of his further proposals for land reform, 'For if I did,' he reported to the Prime

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1 'Statute of Atiu, Mauke and Mitiaro' 1899, 'Statute of Mangaia' 1899, 'Statute of Rarotonga' 1899.

2 'Statute of Aitutaki' 1899.

3 'An Act to provide for the Rating of Land in the Occupation of Foreigners' 1899.

4 Gudgeon to Seddon 29.8.1900 NZNA.

Minister, 'they would never consent to annexation'.[1] Annexation now became the immediate goal. Given the power to enforce his programme of agrarian reform, he claimed, he would make Rarotonga one of the most prosperous places in the world.[2] The programme was often alluded to but never explained in detail, though it was to be achieved by giving security of tenure to the occupiers of the land, having the tribute paid by Maori commoners to the chiefs commuted to a fixed rental, and by nationalizing the land 'with the rights of the land-holders being recognised'.[3] Just what was intended by this last phrase was not made clear.

In 1900 the ariki of Rarotonga were persuaded to submit a petition requesting annexation to New Zealand.[4] The Colonial Office was now agreeable in principle, but required that native lands be protected to prevent reckless alienation.[5] To meet this requirement, New Zealand proposed that a Land Court similar to that operating in New Zealand would be set up to determine ownership of land, and that alienation would be permitted only through the Crown to prevent the Maori people becoming landless. The Court was to be given wide powers to assert the rights of the common people, for the New Zealand Government did not accept the 'feudal

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1 Gudgeon to Seddon 10.8.1900 NZNA.

2 Gudgeon to Governor 2.4.1900 CO 209 PRO.

3 Ibid.

4 Petition of Makea, Karika, Pa, Kainuku, Tinomana and Ngamaru to Governor 6.9.1900 NZPP A3 1901. Ngamaru was one of the ariki of Atiu, but had resided on Rarotonga for many years and was Judge of the Avarua court. Some indication of the methods of persuasion used to get the petition is given in Gudgeon to Seddon 29.8.1900, 8.9.1900 and 4.9.1900 NZNA.

5 Colonial Office to Governor 15.8.1900 CO 209 PRO. The petitioners had requested 'that the land rights of the people shall not be vitiated by annexation' but had not elaborated the point further.

ownership' under which the ariki had allegedly asserted 'rights to the whole of the islands'.[1] As an alternative, New Zealand proposed that a fixed sum might be paid to the ariki to concede all their rights, and the Crown would then assume responsibility for all land, setting aside sufficient for the use of the Maoris.[2] These were possibilities, not commitments, and the actualities were left to be worked out at a later date.

A Colonial Office minute on the above proposals affirmed the necessity for fixity of tenure, and queried whether the title to land should be individual or vested in the tribe or other group.[3] They did not raise these points with the New Zealand Government, however, but merely expressed their hope that 'liberal provision' would be made for native interests.[4] Annexation was effected harmoniously and without question. The chiefs of Mangaia asked for clarification on the matter of land ownership but, when they were assured that native ownership of the land was acknowledged, they unanimously assented to annexation.[5]

The Court established

Administration of the group was provided for by the Cook and Other Islands Government Act,[6] under which existing laws and customs were to remain in the interim, but which gave the Governor in Council full powers to introduce whatever measures he deemed expedient - what the Colonial Office

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1 Seddon to Governor 18.8.1900 CO 209 PRO.

2 This proposal was not acted upon.

3 Colonial Office minute on Seddon to Governor 18.8.1900 CO 209 PRO.

4 Colonial Office to Governor 7.11.1900 CO 209 PRO.

5 Governor to Colonial Office 31.10.1900 CO 209 PRO.

6 'Cook and Other Islands Government Act' 1901.

described as 'power to do whatever he likes'.[1] Specific provision was made for the establishment of 'a tribunal...with such powers and functions as he [the Governor] thinks fit, in order to ascertain and determine the title to land within the said islands...'.[2]

'If we wish to increase the productiveness of the Islands,' said Mr Seddon in introducing the act to parliament, '[and] to further the settlement of a European population on the land, we shall have to give security of tenure and we shall have to encourage planting by the natives themselves.'[3] This was the crux of New Zealand's policy for the next few years - to determine the ownership of land in order to increase production, in the first place by the islanders from such lands as they were using, and secondly by making such lands as they were not actively exploiting available to European settlers. In the initial stages alienation to foreigners was to be by way of lease only.[4]

By Order in Council of 7.7.1902 the Cook and Other Islands Land Titles Court (which will be referred to simply as the Land Court) came into existence. The Court was to consist of not less than two judges, one of whom was designated Chief Judge. It was given power to investigate titles to land, determine successors, impose limits on alienation, reserve land for public purposes, deal with leases, and to handle other matters relative to the tenure of land. The

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1 Colonial Office minute on Governor to Colonial Office 18.12.1901 CO 209 PRO.

2 'Cook and Other Islands Government Act' 1901 section 6.

3 Hansard 119:286.

4 This was not provided for in the legislation, but an assurance to this effect was given by the Prime Minister. - Hansard 119:289.

Chief Judge, who had to be European, was empowered to hold Court sitting alone. No judge who was not a European could exercise jurisdiction except when sitting with the Chief Judge. Gudgeon was appointed as Chief Judge, and Pa Ariki as a Judge.

The Order in Council, which was drafted by Gudgeon,[1] provided that the Chief Judge could 'make and prescribe rules of practice and procedure' for the Court. The rules and regulations made under this provision laid down the procedures to be followed in investigation of title, succession, alienation, and other matters.[2] The fixing of the Court's modus operandi took up the first one hundred and twenty-six clauses, while the one hundred and twenty-seventh gave the Court the right to dispense with any of the preceding clauses, with the exception of eight machinery clauses which dealt with Court documents.

As Administrator, Chief Judge of a Court of his design, head of the local legislature, and representative of New Zealand, Gudgeon was now in a much more powerful position than any ariki had ever been. The adoption of his land reform programme was now assured.

Foreign settlement

The stated objects of the Land Court were to increase productivity from native farms and to open unused lands for European settlers. The question of productivity from native lands will be dealt with later, and attention will now be given to the effectiveness of the policy of European settlement. This policy assumed three premises - firstly that there were large areas of fertile land lying waste, secondly that

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1 Gudgeon to Seddon 7.3.1902 NZPP A3 1903.

2 'Rules and Regulations of the Cook and Other Islands Land Titles Court' 1902.

the Maori population was dying out, and thirdly that the unused land would be made available for settlers by one means or another.

As to the first premise, Gudgeon considered shortly after his arrival that 10,000 acres on Rarotonga alone should be available for leasing.[1] In fact, Rarotonga has a total of only 3,700 acres of land suitable for agriculture and a further 1,530 acres which can be used for tree crops;[2] and as at that time the island had a Maori population of over 2,000, this allowed less than three acres per head. In Atiu, he declared, there was four times as much waste land as at Rarotonga, and 'every inch' of the island was considered worthy of cultivation.[3] Land surveys were to be conducted there to determine 'the area and character of the waste land available for settlement by Europeans'.[4] The total area of land suitable for agriculture on Atiu is 1,158 acres, with a further 3,386 acres usable for tree crops.[5] The indigenous population of the island was then just under 1,000. 'Mauke', the Resident claimed, 'may fairly be regarded as equal to forty square miles of the best land in New Zealand';[6] yet the actual area of Mauke is only seven square miles, less than two of which are suitable for agriculture.[7] This gave only two and a half acres of agricultural land per head of the then population. Even

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1 Gudgeon, NZPP A3 1899:23.

2 Fox and Grange, Soils... 41.

3 Gudgeon, NZPP A3 1902:49, and Gudgeon to Mills 28.5.1903 NZPP A3 1904.

4 Gudgeon, NZPP A3 1902:50.

5 Fox and Grange, Soils... 41.

6 Gudgeon, NZPP A3 1902:50.

7 Fox and Grange, Soils... 41.

allowing for the fact that the islands were as yet unsurveyed, Gudgeon's estimates were quite unrealistic.

The second premise, that of a dying Maori population, was supported by the demographic data then available. At the turn of the century, however, the decline ceased. The policy-makers cannot be blamed for not knowing that, almost from the moment of annexation of the Cook Islands, an upward trend of population growth was occurring throughout the length and breadth of the Pacific.[1] Though the population had reached its lowest ebb in the 1870s and had subsequently risen, this data was probably not available to the Administration. The censuses of 1895, 1901 and 1902 did show a slow downward trend, and combined with knowledge of rapid population decline in the first three decades after contact (which Gudgeon was aware of and quoted) he was no doubt justified in assuming that the decline would continue. The rate of decline shown by the three censuses mentioned, however, was quite slow, and hardly justified the assertion that 'at no very distant date the present native population will either die out or become so much reduced in numbers that it will be necessary to replace them with a foreign population'.[2] In fact, the population increased steadily from 1902 onwards.

The Administration's third assumption was that unused land would be made available for settlers. It was supposed that once the islanders had their land rights assured by the award of documentary titles they would be anxious to lease such as they were not actively using in order to obtain additional income. If they were not prepared to do so voluntarily, however, the Resident proposed that the

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1 McArthur, Populations... passim.

2 Gudgeon, NZPP A3 1902:55.

government be empowered to assume control over unused lands and lease them on behalf of the owners.[1] The Court began its work in the Titikaveka area of Rarotonga, as that was the least utilized part of the island and had the largest tracts available for leasing. Once the Court's work was completed, the Resident prophesied, the whole of the Titikaveka district would be settled by Europeans only.[2] However, after ownership of most of the land was determined in 1903, it was found that very few of the owners were prepared to make any portion available for lease.[3]

When the Resident requested that he be given authority to enable him to enforce the leasing of unused land, the New Zealand Government was not prepared to grant it. A few years earlier New Zealand had hoped to annex Tonga, Samoa and Fiji, but none of these ambitions had been realized, and the vision of a Pacific empire had faded. In 1903 a delegation of thirty-three members of the New Zealand Parliament visited the islands, and, judging from the tenor of debates in the House following their visit, members had developed a considerable sympathy for the point of view of the island people.[4] The chiefs had informed the delegation of their unanimous opposition to the sale of land,[5] and the Opposition was particularly vocal on the question of protecting native land rights. Under these circumstances the government was agreeable to the compulsory acquisition of land only if the local Federal Council was prepared to pass the

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1 Ibid.

2 Gudgeon, NZPP A3 1903:24.

3 Gudgeon, NZPP A3 1904:70.

4 Hansard volumes 125-30 passim.

5 Minutes of meeting of 28.4.1903 NZPP A3(b) 1903.

necessary legislation. As may be expected, the Federal Council would not do so.[1]

In 1905 the Minister still hoped that a settlement programme could be effected by persuasion rather than compulsion, and reported that numerous applications for land had been received from prospective settlers, though as yet the government was unable to give them any assurance as to its availability.[2] He nevertheless promised to compile details of surplus lands for the information of settlers, and hoped that the islanders would soon be induced to lease them more readily. In the following year the situation was unchanged. Indigenous opposition to foreign settlement remained firm, and was supported throughout by the London Missionary Society, which, in addition to its constant pastoral contact with the people, published the only periodical in the vernacular. Referring to the situation in Rarotonga in 1906, the editor pointed out that 'there are only 8,000 usable acres to be divided amongst 2,000 natives.... There does not seem to be much land left to lease'.[3] The survey of the island, which was by then well advanced, confirmed the view that there was much less fertile land than had previously been supposed. With opposition from within the territory and little support from Wellington, the settler question faded quietly away.

A few settlers[4] had indeed obtained leases on Rarotonga, but their number has never exceeded twenty-five, and on all the outer islands put together there have never since

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1 Gudgeon to Mills 12.9.1904 NZPP A3 1905.

2 Mills' covering memorandum of 1.9.1905 to the annual report for the Cook Islands NZPP A3 1905.

3 Te Karere January 1906.

4 By settlers is meant foreigners (invariably Europeans from 1900 onwards) whose livelihood was obtained from the production of export crops.

annexation been more than a scattered dozen or so. The amount of land leased to foreigners increased by only 237 acres between 1906 and 1920,[1] and the number of foreign settlers in the group remained insignificant, being seventeen in 1906 and sixteen in 1922. The remaining few were severely affected by the economic depression of the 1930s, when almost half the land leased by Europeans changed hands to settle outstanding debts.[2] The foreign plantations never recovered and today not a single foreigner derives his livelihood exclusively from export production.

The act of 1915: preservation of custom

An act was passed in 1915 which made some modifications to the existing laws of land tenure, and which elaborated and clarified the jurisdiction of the Land Court.[3] Perhaps the major change was one of emphasis, for whereas the earlier enactments had been designed in part at least to delimit the areas of land needed by the Maoris in order to make the balance available for foreign settlement, the 1915 act was based on the recognition of land as the essential basis of Maori life.[4] The emphasis was on protection, the observance of custom and the retention of land as the primary source of subsistence. This was no doubt due in part to the failure of the settler policy and the programme of colonial expansion in the Pacific; and in part to the fact that from 1909 onwards the ministers in charge of the islands were themselves

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1 NZPP A3 1907:6 and NZPP A4 1920:48.

2 Hansard 247:336.

3 'The Cook Islands Act' 1915.

4 This law was not drafted in response to any pressure for reform, but merely due to the fact that it was discovered that through a technical error the laws of the islands were void and the past work of the Land Court needed to be validated. - Northcroft to Pomare 27.5.1914 NZPP A3 1914.

New Zealand Maoris - men who were struggling at home to preserve the remaining Maori lands for the benefit of the Maori people.[1]

The name of the Court was changed to the Native Land Court, and it was to consist of a Chief Judge and such other judges as were deemed necessary.[2] In practice, however, not more than one judge was appointed concurrently until 1946. Pa Ariki, the only islander ever appointed as a judge, died in 1906 and no other indigenous judge was ever appointed. The act recognized four categories of land:[3]

1. Crown land;
2. Customary land: being that which was 'held by Natives or descendants of Natives under Native customs and usages of the Cook Islands' (i.e. land the title to which had not been investigated by the Land Court);
3. Native freehold land (i.e. land which had been customary land, but in respect of which a registered title had been issued by the Court to the persons it found to be the customary owners);
4. European land: being land other than native freehold land, the fee simple of which had been alienated to any person.[4]

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1 Maoris who held the islands portfolio were Sir James Carrol (1909-13), Sir Maui Pomare (1913-28) and Sir Apirana Ngata (1929-35).

2 The name of the Court had been changed in 1908 from 'The Cook and Other Islands Land Titles Court' to 'The Cook Islands Land Titles Court'. - 'Cook Islands Government Act' 1908.

3 While all land in the Cook Islands vests ultimately in the Crown, the term 'Crown land' is usually reserved to apply to those lands which have been set aside by the Court for public purposes, and it is with this connotation that the term is used in this study.

4 The area in acres of land in the various categories in 1958 was as follows:

	Rarotonga	Other Islands	Total
Crown land	234	716	950
Customary land	3,181	23,903	27,084
Native freehold land	12,986	16,336	29,322
European land (the only land in this category is that vested in religious bodies)	201	69	270
	16,602	41,024	57,626

(Source: LEGAS 1958 paper number 59 and NZPP A3 1958:24.)

All land lying below high water mark was declared to be Crown land, thus annulling the indigenous pattern of rights to reef and lagoon waters.[1]

In general the act followed the earlier enactment under which the Land Court had operated, but several innovations were introduced. Permanent alienation of land (other than to the Crown for public purposes) was prohibited, and leases and other forms of partial alienation were limited to a maximum of sixty years.[2] While this constituted a change in legislation, it merely confirmed the practice which had been observed for many years, for though in its early years the Court had approved of some leases of ninety-nine years duration, no sales of Maori land were ever recorded. In the initial stages this was due to local opposition and in later years to pressure from Wellington.

Wills were invalidated in so far as they related to rights in customary and freehold land,[3] and as these had been one of the means by which rights were periodically redistributed (usually with the effect of adjusting to changed demographic circumstances) an element of rigidity was thereby introduced.[4]

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4 (continued from previous page)
Of the above native freehold land the amounts alienated by way of lease in 1960 were as follows:

Leased by Europeans	1,312	1,592*	2,904
Leased by the Crown	146	210	356
Leased by Maoris	655	22	677
	2,113	1,824	3,937

(Source: NZPP A3 1960:23)

* 1,544 acres of this being the island of Manuae, which has since March 1961 been leased by an indigenous co-operative society.

1 'Cook Islands Act' 1915 section 419. Prior to this date the Court had refrained from awarding interests to land below high water mark.

2 Ibid. sections 467-9.

3 Ibid. section 445.

4 This restriction was probably imposed in order to avoid concealed alienation (such as secret sale) being effected under the guise of a will.

Provision was also made whereby a chief could hold land by virtue of his office as the holder of a particular title.[1] Such lands were to vest in the chief in fee simple, and to pass to successive holders of the title. Though many lands had previously been awarded to persons who held chiefly titles, it was not always clear whether they were intended to hold the rights in their personal capacity or in their role as titleholders. The distinction was necessary in order to know who was entitled to succeed to such lands when a chief died (i.e. whether his children would succeed or his successor in office), who would be entitled to the lands if a chief was deprived of office during his lifetime, and what obligations would affix to the land.

In granting freehold orders involving multiple owners, the Court was required to specify the relative interests of each owner in the land concerned.[2] A similar provision had been made in the original enactment, but it had seldom been followed in practice. While it was occasionally followed after the passing of the 1915 act, it was not until the 1940s that it became a routine practice of the Court. Such shares are not defined on the ground and do not relate to any particular portion of the land concerned, but simply represent the Court's evaluation of the proportionate interest of the various owners. This provision is, of course, out of harmony with the flexibility of custom, but was presumably originally introduced as a carry-over to the Cook Islands from the legislation relating to Maori lands in New Zealand, where it was a technique to facilitate negotiation with settlers and the distribution of proceeds from the lease or sale of land.

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1 'Cook Islands Act' 1915 section 426.

2 Ibid. section 423.

Appeals and rehearings

Until 1946 there was in practice no functional system of appeal. Both the Order in Council of 1902 and the act of 1915 made provision for rehearing[1] but the granting of a rehearing was subject to the approval of the Land Court, and if approved it was usually heard by the same judge as took the case originally.[2] The act of 1915 did make provision for appeal to the Supreme Court of New Zealand, but this, too, was conditional on the approval of the Land Court. It was unlikely that many islanders were aware of this provision, or in a position to finance such an undertaking if they had been.[3]

In 1946, following recommendations made in the report of Judge Harvey of the New Zealand Native Land Court,[4] an Appellate Court was established which was to comprise any two or more judges of the New Zealand Native Land Court or of the Cook Islands Native Land Court (other than the judge who determined the issue in dispute).[5] At the same time provision was made for appeals from decisions of the Cook Islands Native Land Court to lie as of right in future.[6] Moreover, to meet the requests of numerous persons who claimed to be adversely affected by earlier decisions of the Court, special provision was made to enable such persons to appeal (within one year) against any decision of the Court back to the time of its inception. This was intended particularly to open the way for re-investigation of title to those

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1 Order in Council 1902 clause 10 (15-a) and 'Cook Islands Act' 1915 section 390.

2 Actual rehearings were few indeed.

3 So far as I am aware no land case has ever been taken to the Supreme Court.

4 Harvey, 'Report to the Right Honourable the Minister of Island Territories' 35-6.

5 'Cook Islands Amendment Act' 1946 sections 19-40.

6 Ibid. section 25.

lands which Judge Gudgeon had awarded for life interests only to ariki and which Judge McCormick had turned into fee simple by succession order.

The Appellate Court first sat in 1948 and held annual sittings until 1952 in order to clear up a backlog of appeals. As intended, a significant proportion of the appeals against earlier decisions of the Court were in relation to lands which had been awarded originally to ariki for life interests only. The most important of these dealt with lands in the Avatiu and Nikao tapere and resulted in the loss of those lands by the ariki and their award to the issue of the persons found to have been the original owners. Many of my informants claimed that they would have appealed against other decisions as well but were unable to do so owing to the high cost of deposit (£15 sterling) and the fact that the elders of the family who knew the relevant details had died (while the bases of the claims had not been recorded by the younger generation as they considered that nothing could be done). Some who did successfully contest rights to one section of land stated that they would have claimed for others also but were not sure how the Court would function in practice and accordingly did not wish to commit themselves too deeply. By the time the first cases were heard, of course, the time for the lodgement of appeals had expired.

Having dealt with the outstanding appeals the Appellate Court became a routine adjunct to the work of the Land Court and has since sat at three-yearly intervals. While sittings are normally held in Rarotonga, every attempt is made to ensure that it is accessible to the island people and sittings have been held in Aitutaki, Mauke and Atiu.

Chapter 11

THE LAND COURT IN ACTION

Determining ownership

The main function of the Court in its dealings with natives was to determine the customary owners of the land and to issue them with registered titles. These were known as 'freehold' titles, though the term carries a different connotation from that in New Zealand or England, for a Cook Islander with a 'freehold' title has no power of devise and is usually one of many co-parceners.

As indicated in part one of this study, a variety of classes of rights in land was held by a hierarchy of social groups and by a wide range of persons; the exact nature of the right of each individual depending on his or her status within, or relationship to, that descent group which held the primary rights to the land. Judge Gudgeon aimed to issue title to what he called the 'true' (or 'real') owners, and it is clear from his writings that when he spoke of 'true' owners he was referring to the primary members of the occupying minor lineage (or to an individual or sub-group within that minor lineage) to whom the land in question had been allocated under custom. Such persons are referred to here as primary right-holders. It was essential, he felt, that each 'cultivator' should hold his own plot of land 'either in fee simple or by perpetual lease at a nominal rent'.[1]

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[1] Gudgeon, NZPP A3 1902:48.

He was aware of the fact that under native custom multiple rights were held in each section of land, but specifically provided the means whereby the Court would strengthen and confirm the claims of the primary right-holders and annul all other forms of rights. The reason for this action was two-fold: firstly, by breaking down the hierarchy of rights he hoped to achieve security of tenure and a lessening of tribute (as evictions and demands for tribute were invariably made by the heads of the higher segments of the social hierarchy); and secondly, by annulling the secondary rights of persons of the same social class as the primary right-holders he hoped to abolish the customary claims of kin and affines to the use, and more particularly to the produce, of the lands of their relatives (as the demands of kin were felt to be an obstacle to increased output). In short, whereas under custom one's land rights were a function of one's place within the social structure and conditional upon those of others, the Court proposed to give unencumbered rights to individuals, and to annul what it considered to be production-limiting customs which vested titles in persons as representatives of groups and limited the use to which they could put their rights.

This intention of the Court resulted in a very considerable modification to custom. Such a change may well have been justified, for the customary tenure system was evolved to meet the needs of an isolated subsistence economy, and by 1902 the people had participated to some degree in a market economy for three generations. Means of ensuring increased security of tenure for the cultivator were probably desirable, for whereas in the pre-contact economy it was seldom in a chief's economic interests to evict a member of his group, in the changed economy of the late nineteenth

century it was often to his material advantage to do so. Moreover, the Court had been designed to facilitate increased production for export, and it was considered that this could be best achieved by reducing the number of persons with claims to each section of land as far as possible.

To what extent then did the early Court achieve its aim? An analysis of all cases dealt with in Rarotonga from the first sitting on 2 April 1903 until 18 April 1905 shows that of the 167 sections of land investigated,[1] some 55 (or 33 per cent) were awarded to ariki solely, 16 (or 10 per cent) to mataiapo solely, and 12 (or 7 per cent) to other titleholders. In total then, fifty per cent of the lands were awarded exclusively to titleholders.[2] While it has not been possible to compile data on the areas involved, it would appear that the areas awarded to titleholders only were as large or larger than those awarded to others, though they were frequently in the less densely settled areas of the island.

Of the other 84 sections, some 13 were awarded to ariki and members of their immediate families, 4 to ariki and commoners jointly, 33 to mataiapo and commoners jointly, 16 to rangatira and commoners jointly, and only 18 to persons who were either commoners or whose rank status is not known to me.[3] Of the whole 167 sections, almost ninety per cent were awarded to either titleholders alone or titleholders

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1 This does not include village house-sites held under the akonoanga oire, leases, or church lands.

2 The ariki and mataiapo would at this time have constituted about two per cent of the island's population.

3 It is quite possible that some of the persons in this last group were in fact rangatira or komono. The Court seldom mentioned the rank of the persons to whom it made awards, and titles of the above two categories are so numerous that it was not possible to compile a comprehensive list of them.

jointly with some of their followers. In most instances where untitled persons were included in the awards they were not all the persons with primary rights to the land concerned, but were the heads of extended families.

According to the Judge's own criteria of what constituted a 'true' owner, his judgements at this period were not giving effect to his stated policy, for as only those persons named in the orders of title had any legal right to the land the junior members of many families were deprived of all rights to the land they were planting. The actual situation was close to the antithesis of that which it had been supposed would result from the operation of the Land Court. Fortunately, however, it would appear that custom in this matter was stronger than the legal provisions, and that, in the early years at least, the chiefs in effect regarded their title to the land as one of trusteeship rather than outright ownership, and the junior branches continued to occupy as before.

Judge Gudgeon was well aware that his awards were often not consistent with his intentions, but found his hands tied by the fact that:

> From time immemorial it has been the custom to regard the eldest born of the senior branch of the family (mataiapo) as the natural guardian and trustee of the family land, as the man who, by right of birth and by subsequent election by the elders of the tribe, should manage the whole estate in the interests of the family.... So great is their respect for this old custom that it is well-nigh impossible to make those who are most deeply interested come forward and claim inclusion in the list of names. They are quite satisfied to have the names of one or two elders of the family placed on the Court records, and cheerfully ignore the possible legal effects of their own prejudices.[1]

In the same paragraph he goes on to claim that the people did not recognize the right of the titleholder as being

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[1] Gudgeon, NZPP A3 1904:70-1.

'any greater than that of any junior member', but this assertion would appear to contradict the above quotation, as well as other available evidence.

Henceforth, to avoid further aggregation of chiefly power over land, the Judge gave greater emphasis to ensuring that each 'family' (minor lineage or kiato) had separate lands awarded to it. As far as possible he insisted on recording the names of all adult members of the 'family' concerned, in some cases going so far as to include affines, but they were recorded as joint owners in each section rather than each man having an individual section allotted to him as the Court had earlier intended.

In the early years of the Court's operation there was but little proper investigation of ownership. It was usual for a claimant to stand and assert 'I own this land', whereupon the judge would ask whether there were any objectors, and if there were none he would award to the claimant or claimants without further ado. Substantiation of the claim was called for only when there was dispute. In many instances, no doubt, lack of dispute indicated the the claimant had derived his right by accepted processes of custom. Nevertheless, it was also in some cases due to the fact that other legitimate claimants were absent, intimidated, unaware of the fact that the case was being heard, or convinced that as junior members of the lineage it was not appropriate for them to appear in court and that their respective chiefs would be looking after their interests.[1]

Judge Gudgeon realized that at least some of the titled claimants to lands before the Court were either not the rightful ones or not the only ones, and if such cases were

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[1] Evidence of persons in each of these categories is contained in the records of the Appellate Court which was set up in 1946.

not disputed he frequently awarded the claimant a life interest only, with the intention that investigation to the title of the land would thus be deferred until that person's death. By that time, he hoped, the function of the Court would be more widely understood and claimants who had been absent, intimidated or otherwise restrained from prosecuting their claims would be able to come forward and establish their rights. Perhaps equally important was the fact that Gudgeon had to play the dual role of judge and administrator, and the very chiefs whose rights he questioned were those whose co-operation he needed for the efficient administration of the territory. Granting them a life interest avoided the otherwise very real possibility of an embarrassing breach with the chiefs. This was not a case of merely delaying the evil day, for he was of the opinion that there would be no more ariki after the passing of those then reigning.[1]

By the time the holders of many of the life interests had died, Judge Gudgeon had retired. His successor, Mr Eman Smith, never exercised his powers as a Judge of the Land Court, and it was not until 1913, when Judge McCormick was appointed as Resident and Judge, that work relating to land titles was resumed. Whether because he did not understand Judge Gudgeon's reasons for granting life interests only, or whether due to his administrative responsibilities it would have been an embarrassment to reopen these cases (for despite Gudgeon's proposals no limitations were imposed on the

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1 This view seemed plausible owing to the fact that the three most prominent ariki of Rarotonga, and the leading ariki of Atiu were all childless. Gudgeon regarded the New Zealand Government as 'the natural successor to the present Arikis'. - Gudgeon to Mills 18.7.1905 NZPP A3 1906. He later modified this view to the extent that he considered successors could possibly be permitted if they gave a written undertaking 'that they understand that the old powers of the Ariki have gone for ever, except where conserved and recognised by the law...'. - Gudgeon, NZPP A3 1908:6.

succession to ariki titles) Judge McCormick proceeded by way of amendment of title. Firstly he declared that the original orders concerned did not give effect to the 'intended' decisions of the earlier Court, and then amended them by adding the words: 'With remainder to such person or persons as the Court may by succession order declare to be the true owners of the land described therein'.[1]

Having thus empowered himself to grant succession, he proceeded to award it without further investigation to the heirs of those chiefs who had held the life interests. There was of course no legal provision for granting succession to life interests, and this action, which has been severely criticized by later judges,[2] was the cause of considerable litigation in the late 1940s when provision was made to re-open certain categories of cases on appeal.[3]

Title to village lands

Arorangi was the first village investigated by the Court and there Tinomana Ariki claimed almost all the house-sites as successor to the original donee, and the remainder were claimed by subordinate titleholders on the same basis. None of the claimants disputed the right of the various householders to continue to occupy the sites. Each section was awarded to the ariki (or other titleholder) 'subject to the occupation rights acquired by the house-owner thereon'.[4] Having thus granted a nominal proprietorship to the ariki,

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1 MB 5:158 NLC. Power to amend orders of title was given in clause 25 of the Order in Council of 1902.

2 E.g. by Judges Morison, Harvey and Morgan in AMB 1:185 NLC.

3 Title to lands wherein succession was granted to a life interest, but which have not been challenged in the Appellate Court, still remain uninvestigated today, for the reason that unless the de facto possessors apply to the Court for investigation, no jurisdiction exists under which they can be re-opened.

4 MB 1:59-69 NLC.

the Judge provided that, so long as there were living descendants of the present householders, they would 'be deemed to be the absolute owners of the house and land'.[1] Householders were required to pay an atinga (tribute) of one shilling per year to the ariki but otherwise their right was not dissimilar to a freehold order. In this way Judge Gudgeon was able to give security of tenure to the occupants without antagonizing the leading chiefs.

Similar arrangements were made in Avarua, where some ariki still today collect the shilling per year atinga, though probably more as affirmation of their residual ownership than for the cash involved. These are the only two villages in the whole group where legal provision was made for atinga to be paid by the householders, and reflects the fact that the ariki of these villages had achieved greater power than those elsewhere. The sum fixed by the Court was intended as a commutation of the much larger contributions in kind which were thought to have been exacted.

On Atiu and Aitutaki, and in the two inland villages of Mauke, the descendants of the original landowners voluntarily waived any claim to residual rights to village lands and the occupiers were issued with freehold orders. Kimiangatau, the coastal village of Mauke, was not set up until 1904, when a large group who felt aggrieved by a decision of the Land Court left the inland villages to establish this new settlement. When title to the house-sites in this village was investigated in 1959 the landowners requested that they be granted the freehold of the land, and that the householders be granted occupation rights. The Court awarded accordingly. The orders of title each contain a clause to the effect that any section which is left unoccupied for five consecutive

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[1] Ibid.

years reverts automatically to the owners of the land. No atinga or other charge was levied on the occupiers. It will be noted that whereas in Avarua and Arorangi rights only reverted if the donee line died out, in Kimiangatau, which had been established under different circumstances, actual occupation was made an additional prerequisite for the retention of rights.

When villages were first established under the influence of the mission, the extremities of each were defined, and the total area contained within those extremities was considered to be village land held under the akonoanga oire. Each occupier and his issue was to have exclusive rights to the house-site allotted to him so long as they continued to occupy. But if the occupying line died out, the procedure for determining the next occupier is not clear, for it is a moot point whether the original setting aside of the land was for the people of the tribe as a whole, or whether each individual site was intended to be treated as a separate gift to each recipient and his progeny. If the former view be accepted, then in the event of a house-site being abandoned it reverted to the occupying tribe for re-allocation to some member who was in need of it. If the latter view be accepted, then the abandoned site would revert to the donor of that particular site and his successors.

In practice it appears that the former view generally, though not invariably, prevailed. While details of transfers of abandoned house-sites are not available for pre-Court days, differential fertility patterns and migration must have resulted in considerable numbers of sites having fallen vacant, especially during the epidemics of the mid-nineteenth century. Had the latter principle applied then large numbers of sites would, by the time of the Court investigation, have reverted to the original donors. Such was not generally the

case, and supports the contention of present day informants that abandoned sections were re-allocated by village leaders, or that if they did revert to the original donors, then they re-allocated them. Even in those villages where the question is complicated by the fact that the village head was also the descendant of the largest original donor, there is still some evidence to suggest that the reversion was to the head in his capacity as village head rather than as descendant of the donor and a recent witness speaking of the Makea lands in Avarua village said that an abandoned house-site would revert to the ariki 'and he would see who he would give the house site to'.[1] The implication is that the role of the ariki was that of trustee rather than of beneficial owner.

The above contention is supported by the experience on those islands where the rights of the original owners were waived. On Atiu, for example, abandoned house-sites were re-allocated by the village elders in accordance with needs, and this is still the case today.

In those villages where the Court awarded residual rights to the descendants of the original donor it introduced an element of rigidity into the system, for whereas it thus made provision for reversion as lines died out, it made no equivalent provision for redistribution to expanding families, or for the accommodation of new families moving into the village. As may be expected, reverted allotments are today often let out for such rental as the market will bear and while they are thus made available for housing, the terms are not consistent with the spirit of the akonoanga oire - a system which was intended to ensure a house-site free of charge to every family.

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[1] AMB 1:22 NLC.

When the Court issued orders of title in respect of akonoanga oire lands in Avarua and Arorangi, it specifically granted the person named as occupier (or his successor) the right to let or lease the site concerned.[1] In recent years, however, the Court has adopted the view that an occupier under the akonoanga oire does not have an unqualified right to lease. It does approve of short-term leases in the event of the holder of the right of occupation being temporarily absent on another island or otherwise not in need of the site for the particular period of time, but in the event of a long-term lease it now insists on the holder of the residual right being consulted and being a party to the negotiation, as well as being recipient of part of the rental.

Thus the Court has in effect revived the rights of the descendants of the families who had almost a century before relinquished all claims (except by reversion) to lands used to form settlements.[2] This was effected through their inclusion in the deed of title, secondly by making legal provision for the payment of atinga in respect of the land, and more recently by their inclusion in negotiations relating to the use of the land.

In exercising its jurisdiction in respect of lands other than those held under the akonoanga oire, the Court has invariably given an unencumbered freehold title to persons who have been able to show undisturbed occupation since the 1820s and often since more recent dates. The right of reversion has not been specified in such orders for the reason that in the event of the death of the owner

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1 Re Arorangi see MB 1:68, re Avarua see MB 4:21A-B and 47A NLC.

2 It may be relevant to note that in the great majority of cases the original ownership of these sections has never been substantiated, the awards being made on the basis of unchallenged assertions of ownership before the Court.

without issue or cognatic kin, the person from whom the land came originally (or his successors) is the proper claimant by succession. That Judge Gudgeon found it expedient to grant a nominal right to the high chiefs is understandable, but why later judges who were not encumbered with both administrative and judicial responsibilities should have chosen to increase those rights even further is difficult to comprehend.

The progress of Court investigations

Investigations of title can only be initated on the application of one or more of the persons claiming a right in the land concerned.[1] This has seldom slowed down the work of the Court, for once one person from any particular district lodges an application, others are forced to do likewise in order to protect their interests, and soon all are involved.[2] Though in the initial stages Makea Ariki supported the work of the Court[3] she became strongly opposed to it once she had seen it in operation.[4] It was not long, however, before Makea decided that she must 'put all of her lands through the Court in self-defence'.[5]

As most of his time was occupied with administrative duties, the amount of land investigation that Judge Gudgeon

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1 'Rules and Regulations...' 1902 clauses 5-7; 'Cook Islands Act' 1915 section 379. The latter enactment also makes provision for the Resident Commissioner to initiate investigations.

2 The island of Mangaia has remained throughout an exception to this rule. There, despite occasional individual applications for Court investigations, the Mangaian leaders (and probably a high proportion of the people themselves) are unanimously opposed to the Land Court and have been able to stop applicants from prosecuting their claims, and thus to forestall the entry of the Land Court to the island.

3 Gudgeon, NZPP A3 1903:24.

4 Gudgeon to Mills 23.12.1904 NZPP A3 1905.

5 Gudgeon to Mills 30.3.1905 NZPP A3 1905.

was able to undertake was limited, though by the time of his retirement in 1909 he had awarded title to all the more fertile lands of Rarotonga and Mauke. No further work was done until 1912, when Judge McCormick was appointed, and again in 1913, when Judge Gudgeon returned for a short period. Thereafter this work was left in abeyance until 1916, by which time there were 527 applications outstanding. Judge Ayson was then appointed to be responsible for High Court and Land Court work only and much of his time until 1922 was taken up with investigations - principally on Rarotonga, Aitutaki and Mauke. In 1922 Judge Ayson was appointed Resident Commissioner in addition to his other duties and accordingly found himself unable to cope with increasing arrears of Land Court work.[1]

Outstanding applications grew steadily and by 1938 there were 1,237 cases waiting to be dealt with, a number of which had been outstanding for more than twenty years. A full-time judge was appointed in 1939 to deal with High Court and Land Court work, but the accumulation of outstanding applications nevertheless remained consistently over one thousand until 1955, when the figure dropped to 857. During more than half of this period there was one full-time judge of the Land Court, in addition to the Chief Judge who had High Court responsibilities as well.

That the Court has never since its inception been able to cope with the volume of work, and that with a full-time judge during the five-year period 1954-8 inclusive an average of only 800 acres of land was investigated each year,[2] is a reflection of the complexity of the tenure situation, the small size of sections, and the volume of 'maintenance' work

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1 NZPP A3 1927:15.

2 NZPP A3 1959:17.

involved in successions, partitions, appeals and so on in connection with lands already investigated. The total area of land investigated by the Court in its fifty-nine years of operation does not exceed 32,000 acres, or about half the total land area of the group.

Chapter 12

COURT PRACTICE AND NATIVE CUSTOM

The Court is required by legislation to determine 'owners' and 'successors' in accordance with native customary principles.[1] These terms have usually been interpreted by the Court to relate only to primary right-holders. The evidence indicates, however, that the Court has never clearly understood or consistently given effect to the customary principles of land tenure in the Cook Islands, even in so far as primary right-holders are concerned.[2] It would further appear that the most important changes which the Court alleges had taken place before its establishment were in fact brought about by the operation of the Court itself and that the major tenure problems of the Cook Islands today are the result of these changes. The implications of these contentions could be far-reaching, and thus they necessitate substantiation in some detail.

When the Court has made awards on principles which it realized were not consistent with pre-contact custom (and

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1 Order in Council 1902 clauses 10(1) and 10(4) and Cook Islands Act 1915 sections 422 and 446. Provision was also made for determining title to lands lawfully acquired by other than customary principles (e.g. grants of land to religious bodies on which to build churches) but these are few in number and small in area and are not dealt with in this analysis.

2 It is realized that there may be differences between some islands within the Cook group, and that this is particularly so in the case of Mangaia and the atolls. As research has not been carried out on those islands, and as the Land Court has not carried out investigations on them to any significant extent, such differences as may exist will not be dealt with here. On those islands where the Court has investigated title, the customs were found to be very similar throughout.

this includes the great majority of succession orders), it has maintained that the relevant custom had changed between the time of first contact and the sitting of the Court. The legislation states that ownership of land is to be determined according to the 'ancient custom and usage of the Natives of the Cook Islands', and in that part of the act dealing with the Land Court it is only in this first reference to custom that the term 'ancient' is used. In subsequent clauses the term 'Native custom' is used. Any possible difference between the terms 'ancient Native custom' and 'Native custom' would appear to be reconciled by the definitions laid down in the act, wherein the former term is not defined but the latter is defined as the 'ancient custom and usage of the Natives of the Cook Islands'.[1]

The terms would thus appear to be identical, but the Court has maintained a contrary view. After conceding the technical identity between the terms it claimed that the act nevertheless intended that while ancient custom should be observed in determining ownership, post-contact changes in custom should be recognized in any subsequent dealings with the land.[2] The Court uses this argument as its charter to determine succession on the basis of modifications to custom which it considers to have taken place during the nineteenth century. Of the changes alleged, the two most fundamental relate to the rights of women and the effect of absence on rights to land.

Rights of women (and through women)

The Court view, according to the fullest and most frequently quoted judgement on the matter, is based on four

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1 Cook Islands Act 1915 section 2.

2 MB 23:6 NLC. Such a view would appear to imply that the Court had observed ancient native custom in determining original title, but in practice it does not appear to have done so.

premises.[1] The first of these is that prior to the coming of the mission in 1823 women had no land rights and could not hold tribal titles. The only evidence given in support of this assumption is the following quotation from the missionary John Williams:

> In one respect, the treatment of females at this island [Rarotonga] was materially worse than that which obtained in the Tahitian and Society Groups; for, whilst in the latter females had a share of their father's possessions, at Rarotonga these went to the male branches of the family, and seldom, if ever, to the daughters, on the ground, as they alleged, that their person was their portion.[2]

Secondly, the Court continued, the custom changed shortly after first contact with European culture. 'Women were accepted as tribal chiefs, and presumably as owners of land, for it is inconceivable that a person who could be an ariki could not own land'.[3] The third premise was based on the Court's interpretation of the following extract of a declaration made by the Federal Parliament of the Cook Islands in 1894:

> The land is owned by the tribe, but its use is with the family who occupy that land. The family consists of all the children who have a common ancestor, together with the adopted children, and all the descendants who have not entered other tribes.[4]

The final premise in the Court's reasoning is that practically every list of owners determined by the early Land Court contained the names of females.

Reasoning from these premises it argued that native custom in relation to ownership and succession had changed prior to the Court's establishment and that it was giving effect to the intention of the legislation if it granted

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1 MB 23:7 NLC.

2 Williams, A Narrative... 214-15.

3 MB 23:7 NLC.

4 'Declaration as to Land' 1894.

freehold ownership rights to women and awarded succession to all the issue of any right-holder, female as well as male (irrespective of whether the person through whom the rights were claimed was at that time a primary member of the lineage in which the rights were claimed). Before dealing with the Court's conclusions it is necessary to examine the validity of the premises on which they are based.

Dealing with the evidence of John Williams, it is significant that he makes no specific reference to land rights, either in the quotation cited or elsewhere in the chapter whence it was extracted, but merely refers vaguely to 'the father's possessions'.[1] On the other hand, as we have already seen, there is adequate evidence to indicate that in the pre-contact era a woman could reside, plant, harvest, and exercise other rights to the lands of the lineage into which she was born for such time as she remained there, and any children she bore there acquired their rights automatically. If she married and went to live in her husband's lineage, she lost primary rights to lands in her natal lineage. They were not annulled or cancelled by her absence, though as a corollary of her new status the exercise of such rights became contingent on the concurrence of the lineage. In some cases that concurrence was given formal and long-term status by granting her special rights to a particular section which was referred to as her marriage portion. While it was common for the mother's lineage of origin to adopt one or more of her children, that was a matter for them to decide.

The holding of titles by women did occur as a change in custom prior to the institution of the Land Court and as

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[1] Williams says that possessions 'seldom, if ever' went to the daughters. If he had merely used the term 'seldom', his statement would not have been inconsistent with the custom relating to transfer of land rights.

a result of this change it became possible for women to exercise such rights to land as were the prerogative of titleholders. This change was initiated by the mission, and, as noted on page 181, women held titles only when there was no eligible male heir directly descended from the previous holder in the male line.[1] The role of the titleholder was a rather special one, and the fact that women were able to hold titles does not necessarily imply (as the Court would appear to have assumed) that the land rights of untitled women were affected thereby.

The declaration by the Federal Parliament would appear on closer examination to be an affirmation of pre-contact custom. The declaration was prepared by a Parliament consisting entirely of indigenous members, and the original was presumably drafted in the Maori language. Unfortunately, no vernacular copy has been located and it is therefore necessary to try to determine what vernacular terms would have been used for some of the key concepts in the declaration in order to understand precisely what was intended.

For the term 'tribe', the original version probably used the word matakeinanga - i.e. the local group based on a major lineage occupying a tapere.[2] For 'family' the original probably used either ngati or kopu tangata. The ngati was an ambilateral (though predominantly patrilateral) minor

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1 There were exceptions to this rule - one of the most outstanding of which was Makea Te Vaerua, the first female to hold a title in the group, who succeeded to the title although she had surviving younger brothers. Her village, however, was the group headquarters of the mission, and there mission influence was at that time at its height. Te Vaerua was a strong supporter of the mission, and her husband Tiberio was the senior non-European missionary resident there. Her younger brothers, on the other hand, were not then so active in their support of the mission, nor so 'consistent' in their adherence to its moral precepts.

2 It almost certainly did not use the term vaka, for evidence clearly shows the marginal nature of rights at that level.

lineage headed by a titleholder. In most tapere there were several such minor lineages each headed by a rangatira or komono under the mataiapo or ariki who was head over all the people of the matakeinanga and the tapere occupied by it.[1] Alternatively and even more probably the term kopu tangata was used, and if so it would connote either those people who constituted a whole ngati, or a component kiato or uanga.[2]

The Rarotongan language has no verbal equivalent of the English word 'owned', and the original probably used the Maori possessive particle 'no'. This does not imply absolute ownership in the Western legal sense, but rather that a particular relationship existed between the major lineage and the land such as to exclude persons or groups who were not a component part of that major lineage. The group having the rights to use the land, it will be noted, was the occupying minor lineage or a segment of it. (The Court here noted in the judgement that it was 'those persons who had a right to use' who were generally awarded legal title). The Court lays emphasis on the fact that the declaration states that the right-holding family consisted of '<u>all</u> the children' to show that the custom had by then changed to include females. This reasoning would appear to be unsound by virtue of the fact that the next phrase stated that those who entered other lineages were thereby excluded.

The declaration itself appears perfectly consistent with pre-contact custom - while nominal ownership lay with the major lineage, the right to use rested with the occupying minor lineage, kiato or uanga, all members of which had

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[1] The term ngati, used here to denote a minor lineage, can also be used at higher levels of social segmentation.

[2] The term kopu tangata can be used with several other related meanings which would not be relevant in this context.

rights in the land as a function of their membership of the social group. Those who entered other lineages (usually females at marriage) lost their primary membership of their lineage of origin. That it should accord with pre-contact custom is the more to be expected by virtue of the fact that the Parliament which made the declaration stated that it was merely confirming the custom which had existed 'from time immemorial to the present day'.[1]

The Court next utilized lists of owners that it had compiled itself on the basis of its interpretation of custom as evidence to show that the custom had changed to include females as 'owners'. An analysis of the investigations made into the first 167 sections of land dealt with in Rarotonga shows that they were awarded to a total of 686 names.[2] Of these 443 were males and 243 were females. Excluding the 65 instances of awards to females in their capacity as titleholders, the proportions are 443 males to 178 females. The important question to determine is whether or not those 178 females were primary members of their respective lineages, for if they were, then it would indicate that the custom had not changed. The 'Declaration as to Land' proclaimed that all the family had the right to use, and it was the people with primary use-rights to whom the Land Court attempted to make its awards.

Owing to the fact that Judge Gudgeon relatively seldom called for substantiation of claims, and even more seldom recorded the reasons for his awards or the relationship between awardees, it is impossible to prove that the women whom he found to be entitled to land rights were primary

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1 Preface to the 'Declaration as to Land' 1894.

2 This does not mean 686 separate individuals as some individuals had rights in several sections. The total number of persons involved was about 525.

members of the lineages concerned, though in those cases where data are available they were almost invariably primary members. The possibility that in 178 instances out of 686, primary use-rights were held by women is not at all surprising. Unmarried women as well as widows or divorcees who had returned home retained or regained primary membership. So also did those married women whose husbands resided uxorilocally. Furthermore, a number of the awardees were children who of course generally resided in the lineages of their birth irrespective of sex.

The important change introduced by the operation of the Court was that a legal award of title was not dependent on lineage affiliation and in the eyes of the law at least, the land rights of a person who left the lineage remained unaltered.[1] It was at this stage and for this reason that the rights of women began to change. But even so, the change did not take place immediately, for it took time before the effect of the Court's action was everywhere felt.

We have seen from part two of this study that the greatest impact of culture change was on Rarotonga, the island which became the commercial and administrative headquarters of the group. And within Rarotonga the greatest changes were wrought in Avarua, the district and village which became port of entry and 'capital' of the group. If change in land custom could be expected anywhere, it should be most pronounced in that area. In fact, this did not happen prior to the establishment of the Court, which itself initiated the change. A summary of a case from the heart of the Avarua district is appended to demonstrate this fact.[2]

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[1] It was most commonly (though not invariably) women who left their primary lineage to join another at marriage.

[2] Appendix B.

As a further indication that the changes described did not come about by autonomous change within the society, let us examine the case of the island of Atiu, where large-scale investigation by the Court did not begin until the 1950s. Detailed field study in 1959 showed that in nearly eighty per cent of instances the rights to land were traced through the father. Of the thirty-five sections of land in which rights were at any stage succeeded to through a female, nine were instances of uxorilocal marriage, four were instances of women having issue but no recognized husbands, twenty-one were cases of there being no agnatic male heir, and the last one was a case in which there were agnatic male heirs but they had left the island and were living elsewhere. This is in accordance with pre-contact custom whereby one's land rights were derived through that parent who was a primary member of one's lineage of residence.

The rights of absentees (contingent and secondary right-holders)

The second major aspect of custom which the Court alleged had changed was that of absence and its effects on land rights. The Appellate Court has expressed the view that whereas in the pre-contact era a person who left his own district lost all rights to land there, after a period of contact the custom was modified and it was only when he left the island itself that he lost his rights. By 1903, it maintained, the process of modification had gone further and it was then accepted as custom that it was only when one left the Cook group entirely that one lost one's rights. On the basis of the 'progression' of change postulated above, it reasoned that even greater relaxation of the original rule might be expected in 1951, the date of this statement.[1]

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[1] 'We believe that it was once a native custom of Rarotonga that a person leaving his or her district for another lost

It is necessary to examine in some detail the three premises on which the final postulate (and subsequent decision) was based.

The first premise is that under pre-contact custom a person leaving his district lost all rights to land there. This was indeed normally the case in so far as primary rights were concerned, for persons who went away to live in another district normally did so in order to join another lineage. But the loss was neither automatic nor absolute, for while in the normal course of events such persons lost primary rights to the lands they had left, they retained contingent rights, and their issue held secondary rights.[1] If a person was banished from his lineage, then he lost all rights to its land whether he went to another part of his own district or to another district altogether. He did not even retain contingent or secondary rights in the land unless these were reinstated to him or his issue following a later rapprochement. The crucial factor would appear to have been lineage affiliation rather than absence.

The second premise was that after a period of contact one only lost rights by actually leaving Rarotonga. However, there are many instances during the period of people leaving the island who nevertheless maintained some contact with their home lineages, and who did not establish themselves as

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1 (continued from previous page)
all rights to land in the former. Later on it appears that it was only when a person left Rarotonga itself that land rights were lost. Then again in the Vaimaanga 6 case (MB 1:46) the Court said in its judgement: "The Court...will ignore the rights of Pakiri and Mangio unless it can be shown that there are direct descendants of these two men living within the Cook Islands." This judgement was given over 40 years ago and a Court today may find an even greater relaxation of the original rule.' - AMB 1:162 NLC.

1 There were, nevertheless, some atypical pre-contact instances of persons living in one district and exercising land rights in others. In all such cases noted there were special extenuating circumstances.

permanent members of their host lineages on the islands where they were temporarily domiciled. Despite absence for many decades in some cases, their rights were recognized and preserved by their respective lineages.[1] On the other hand there are numerous instances of men who remained within Rarotonga, but who left their lineages with the intention of permanently joining others and accordingly lost primary rights to the lands of the lineages they left.[2] The more logical and consistent interpretation (particularly in the absence of any evidence to the contrary) is that the loss or retention of rights was dependent fundamentally on whether or not they were still regarded as primary members of their respective lineages; and in the case of contingent members, on what action they took to maintain contact with their descent group of origin, and to regain primary membership of it if they returned.

The third premise is based on a statement of the Court in 1903 in respect of a particular piece of land to which it would not admit the issue of two particular rangatira unless it could be shown that they had living descendants within the Cook Islands. An examination of this case shows that it did not constitute a change of custom - on the contrary, it illustrates the principles of succession and reversion under native custom, and shows that they were still operative at that time.

The circumstances of the case may be summarized as follows.[3] Two portions of land had been held by each of two

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1 E.g. Ta'unga who was absent in New Caledonia and Samoa for 38 years and who thereafter returned in 1878 and resumed his primary rights.

2 E.g. Mataiti who shifted only a matter of a few hundred yards, but did so in order to join in another lineage and thus lost primary rights in his lineage of origin. - MB 19:165-6 NLC.

3 The full case is recorded in MB 1:30-46 NLC.

rangatira. At the time of the case (1903) no person held either of the titles, and none of the issue of the previous holders was living on the land. The case was principally a dispute between two related mataiapo whose own lands were contiguous, and both of whom claimed rights in the disputed lands by reversion. No party or witness mentioned any issue from one of the rangatira (Mangio) and it is quite likely that there were none. The case of the other rangatira (Pakiri) takes up almost the whole of the evidence. Pakiri had two children, a son named Pakiri and a daughter named Te Paeru. Both children married. Pakiri junior had only one child, a daughter. She married a man in a neighbouring district and bore children who were living on the island at the time of the case but who made no claim to the land. Nor did the parties to the case consider that this family had any right to it. This was in accordance with the custom whereby her children would be expected to inherit their primary land rights in their father's lineage. Te Paeru, on the other hand, married a European - a man without either land or lineage - and it was customary in such cases to treat the children as members of the lineage of their mother. This is confirmed by the fact that both disputing mataiapo regarded them as such.

At the time of the case, however, the children of Te Paeru were living in New Zealand, and it would appear quite likely that it was their intention to remain there. Nevertheless, one of the disputants maintained that the children retained their rights to the land (presumably, though he does not say so, because owing to there being no other direct issue from the Pakiri line who had not joined other lineages, he regarded them as still being primary members of their mother's lineage). The other party to the dispute agreed that they had had a legitimate claim in earlier years

and went so far as to say that a previous holder of his title had specifically taken these children to the lands and shown them their boundaries. But, he explained, following a dispute as to whether they belonged to his major lineage or that of the other mataiapo, the children finally gave their allegiance to that mataiapo, and because of this action the former mataiapo had tried to deprive them of rights to this land.

No party or witness at any stage stated or implied that their absence in New Zealand was considered to be of any relevance to the case. In fact, if absence from the island was the significant factor, then the issue of Pakiri's daughter who lived nearby in Avatiu, and who were equally closely related to the original owner in blood, would have had the primary rights to the land.

It was Judge Gudgeon who introduced the factor of absence, and, with the obvious intention of excluding the issue in New Zealand, stated that the Court would ignore the rights of any of Pakiri's descendants unless they were living in the Cook Islands. Quite incidentally, this ruling technically gave the issue of Pakiri junior a right, though this was probably unintentional (there is no evidence of their having exercised it). The Court itself, therefore, would appear to have been the agent of change.

In the statement referred to at the beginning of this section the Appellate Court noted that as the decision just discussed was made over forty years ago an even greater relaxation of the original rule could be expected today. As almost all the lands of Rarotonga were clothed with legal titles by 1908, it is impossible to say what changes, if any, would have taken place in the absence of the Court. Under these circumstances the best available evidence is provided from the neighbouring island of Atiu where no extensive

Court investigations were carried out until after the Appellate Court had made its statement.

Field investigation on Atiu indicated that there, too, lineage affiliation was the crucial factor in determining primary rights to land up to the time of the Court investigations. Absence was quite an important factor in determining lineage affiliation, but absence of itself did not cause the severing of that affiliation. The rights of the children of contingent members differed according to whether their parents had, or had not, permanently joined other lineages. Many Atiuans who have been absent from the island for many years, who have not joined other lineages (e.g. wage-earners in Rarotonga) and who have maintained contact with their families of origin and intend to return to them, would have no difficulty in resuming primary rights in their respective lineages. Their children likewise could do so if they wished. On the other hand, those remaining on Atiu who have married into other lineages and live on their lands, are regarded as having more tenuous contingent rights to the lands of their lineages of origin and their children would be unlikely to claim primary rights there unless they had been adopted back. From pre-contact times until today the important criterion for the retention or resumption of primary rights to land has been lineage affiliation.

The evidence clearly indicates that the rights of women and of absentees were determined on the same basis as the rights of other persons, i.e. as a function of their membership of a particular lineage and of their status within it. The first significant post-contact changes in this system were those wrought by the operation of the Land Court itself.

The effects of erroneous Court interpretations

While the Court has not generally determined original ownership from a study of the composition of the appropriate

lineage, it has aimed at locating those persons who had a primary right to use the land.[1] This approach has usually been reasonably effective, for the right to use was normally a function of lineage affiliation.

The fact that the legislation did not make any provision for the suspension or annulment of the rights of contingent members of a lineage does not appear to have had serious adverse effects. One who left the lineage as an adult (generally at marriage) not infrequently came back in the event of divorce, separation or death of the other spouse. Accordingly, it was not unusual for a contingent right to be reinstated to its former level. Moreover, during the period of absence it was unusual for a contingent member to exercise any rights in these lands.

In determining successors, however, the lack of awareness of the role of lineage affiliation has had serious consequences. Despite the legal requirement that it should do so, the Court has seldom sought to investigate which persons were entitled under native custom to succeed to the land rights of a deceased owner. It has generally merely asked for a list of names of the children of that owner and awarded to them in equal proportions.[2] It is true that some judges have recognized customary selective criteria in particular cases, but this has been the exception rather than the rule.[3]

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1 Judge Morgan's investigations have been considerably fuller than those of earlier judges, and claimants have been called on to prove their claims. As he has determined ownership with reference to detailed genealogical tables as well as the evidence of witnesses, his judgements on investigation are, in effect, generally made on this basis.

2 As exemplified in the Ngati Te Ora case attached as appendix B.

3 As early as 1908 the Court had expounded the erroneous principle that 'all of the children have an absolute right to succeed to their parents in all their lands, subject to sensible divisions they may themselves make'. - Gudgeon, Cook Islands Gazette 3.4.1908.

Once the process was set in motion, and secondary members of the lineage were granted primary rights in lineage lands, it was self-perpetuating. When a legitimate right-holder found his rights being whittled down owing to the fact that equal rights had been awarded to people who did not belong to his lineage, he was forced, in self-defence, to claim primary rights in the lineage of the parent of whose lineage he was only a secondary member. This process took several decades to set in motion to any serious extent, firstly because in many instances when an owner died, nobody claimed legal succession at all, but the primary members merely continued to use the land in accordance with custom; and secondly because even where the Court did award equal rights to primary and secondary members of the lineage, the secondary members did not attempt to exercise their legal rights.[1] But by the 1940s, in some lands on Rarotonga and Aitutaki particularly, the snowball had gained serious momentum and size.[2]

Judge Morgan was aware of the existence of the problem and of the fact that customary succession was not to all the issue of a previous right-holder, but only to 'those who, according to Native customs of succession were entitled to succeed'.[3] Though never clearly defined, nor consistently

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1 In several instances during field work informants stated that they did not wish to apply for succession to land they were occupying, for while their present de facto occupation was accepted by the non-resident relatives, they feared that some of the latter may wish to interfere in the use and allocation of the lands if they acquired equal legal rights as a result of the Court practice in determining succession.

2 As indicated on page 214, during the first few years of its operation the Court found itself awarding many family lands to chiefs solely. This error was inadvertently corrected to some degree by the subsequent granting of bilateral inheritance to the rights of the chiefs concerned, and a consequent spread of rights to a degree which more closely equated the customary situation (though it did of course favour ranked families as against commoners). If the process could have been stopped once this balance had been achieved no serious difficulties would have arisen later. But as these factors were not recognized by the Court or the Administration, no action was taken.

3 MB 23:7 NLC.

prosecuted, this policy would probably have been sufficient to have stopped the situation from deteriorating too rapidly were it not that one of the judgements in which he limited succession in accordance with customary principles was appealed from. The decision of the Appellate Court, which is of course binding on the Land Court, laid down the principles which were to be followed in determining future cases of succession.

The Appellate Court took the view that once land was clothed with title, succession should be determined in accordance with 'the principle of Maori custom that all children succeeded equally'.[1] Such, however, was not Maori custom, and the Court admitted this fact in the same judgement, but carried on to rationalize its inconsistency by saying that this was 'a change of Maori custom which the Maoris agree to and which is suited to the changing conditions'.[2] They gave no indication as to how Maori agreement had been ascertained, or in what way the new custom suited the 'changing conditions'. 'Once customary title was transferred into a legal title', they continued, 'there was no custom which operated either to exclude or to oust.'[3]

That these two judges were not aware of the basic principles of Maori land tenure is clear from this and other statements made in this judgement. They regarded the particular case, which should properly have been determined in terms of lineage affiliation, as one of the effects of physical absence on land rights. Such a custom, the judges declared, was 'no longer acquiesced to by the community at large, and therefore it cannot be regarded as custom or

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1 AMB 3:10 NLC.

2 Ibid.

3 Ibid.

usage'. It was, they said, a 'dangerous and unreasonable doctrine'.

The judgement further noted that the Cook Islands Act required the Court to determine succession according to native custom as far as that goes, and according to European law where no custom applied. Arguing from the fact that legal title was unknown to the islanders until the advent of the Court, they questioned whether any custom could be invoked once legal title was introduced.[1] Such a contention, however, is obviously contrary to the intention of the act, which, made after the Court had been established and legal titles granted for over 12 years, nevertheless specifically stated that succession must be 'determined in accordance with Native custom so far as such custom extends'. That appropriate custom did exist is amply demonstrated, and that it was modified by the action of the Court is also clear, but its final legal destruction resulted from this very judgement. As rulings of the Appellate Court are binding on the Land Court, all succession since 1957 (the date of the judgement concerned) had therefore to be granted in accordance with the principle that all children should succeed equally, as ruled in this decision.

The effect of this judgement was to make every person inherit a share in all the lands of both his parents - an ever decreasing fraction of an ever increasing number of sections of land. He is not allowed to will it to another, to sell it, forego it, or even give it away, for to do so would constitute alienation as defined by the act. There is, to be sure, legislative provision for exchange of interests

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[1] 'It is certain that freehold titles known to English law and to real property lawyers were quite unknown to the Maoris of these islands up to the advent of the Native Land Court.... For this reason we find it difficult to say that their ancient customs could extend to such forms of title which were never in their contemplation.' - AMB 3:11 NLC.

such that if owners of minute shares wish to measure the relative areas and values of their scattered interests, they can, subject to the approval of the Court, exchange the shares of one person for those of another person in another section.[1] In view of the trouble and expense involved, such a course of action has been adopted by only a very few people.[2]

An indication of the effect of these imposed principles in practice is shown from field studies on Atiu where titles to most of the lands have only been investigated within the last decade. The district of Tengatangi contains an area of 1,075 acres and a population of 252.[3] Excluding house-sites and lands of a public nature (the church site, tribal marae, government residence, etc.) there are 78 sections of land in the district. The Land Court awarded title to these lands to a total of 891 names[4] - an average of 11.4 owners per section.[5] As the Court awarded equally to primary and contingent (and occasionally secondary) right-holders, the number of owners under custom would have averaged only about five or six and between them there would in most instances have been some arrangements as to which of them would plant on the land.

When awarding title, it is the Court's practice to include as owners only the oldest living member of each line

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1 'Cook Islands Act' 1915 sections 438-44.

2 No cases are known from any island except Rarotonga, and there the total number of instances of exchange does not exceed ten.

3 Total area of the island is 6,654 acres and total population 1,360 (in 1959).

4 As most owners have rights in more than one section this does not mean 891 different persons.

5 Excluding four large and virtually unused sections in the makatea which account for over half the land area of the district, the average area per section is 6.17 acres.

of descent (e.g. it does not include sons and daughters in the title if the parent from whom they derived their right is still living). Owing to the Appellate Court ruling giving primary rights to all the issue of an owner irrespective of lineage affiliation, we must add the issue of the 891 names referred to. Data collected in field studies show that this gives a total of 6,237 names, or 79.8 right-holders per section.[1]

Of these 6,237 rights, 1,535 are held by persons living in Tengatangi district, 1,829 by persons living in other districts on Atiu, 1,534 by persons living in Rarotonga, 531 by persons living in New Zealand, 150 by persons living in Mauke, 155 by persons living in Mitiaro, 84 by persons living in Mangaia, 167 by persons living in Aitutaki, 174 by persons living in Manihiki, 60 by persons living in Tahiti, and 18 by persons living in other places. It will be seen that, though the original titles were issued only about five years ago, less than a quarter of the rights to the lands of Tengatangi district are now held by persons who live in Tengatangi, and as many are held by persons living in Rarotonga as there are by persons living in Tengatangi itself. It can be safely assumed that the proportion of rights held by people living in Tengatangi will continue to decline. While at present most of those who have joined other lineages do not in fact exert their legal rights, an increasing number are already doing so (especially in regard to income-bearing tree crops) and a number of Atiuans expressed concern at this trend.

In the next generation, due to the joint action of the law and a rising birth-rate, there will be an average of about two hundred right-holders per section. The increase

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[1] Persons who were included in the original lists but who have subsequently died have been excluded from this figure.

of numbers is aggravated to a considerable degree by the fact that the Court gives the titleholder or family head no right of any kind superior to that of any other person. There is thus no basis for any system of leadership or organization of this increasing number of people. Under customary tenure the co-owners were not only relatively few in number but were members of a single lineage (or segment thereof) with a common locale and a defined authority structure. Now the owners are more numerous, belong to a variety of lineages, reside over a widely scattered area, and have legally equal rights with the customary leaders.

The exploitation and control of the land is at present still generally workable owing to the respect which is accorded to the elder resident members of the family, but this respect is already fading. Even during the short period of residence in Atiu two disputes arose wherein individuals from other villages who held legal rights in Tengatangi lands, but were only secondary members of the descent groups concerned, asserted rights to land which had been allocated to others in accordance with custom. The co-owners were in both cases unanimous in their opposition, but were unable to take any action due to the legal rights of the 'aggressors'.[1]

This trend whereby the actual control of land goes to the most aggressive right-holder is just emerging in Atiu, but in Rarotonga, where the process has developed to a greater extent, it has become, in some areas at least, the rule rather than the exception.

The average adult (male and female) in Tengatangi now holds rights in 9.7 separate sections of land. Due to the

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[1] It is quite possible that if these cases were taken to the Land Court the majority would be upheld, particularly as both intruders had ample unused lands in their own districts. But the Court only sits in Atiu once every two or three years, and the people did not consider that it would support them in any case.

Court practices discussed, however, most of these rights are held in districts other than their own[1] (an average of 4.3 sections in one's own district and 5.4 sections in other districts on the island). The average child under sixteen years of age in Tengatangi has rights in just under twenty sections of land, and the next generation will have rights in nearly forty.

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[1] This is due to the tendency to marry outside one's district coupled with the current legal practice of deriving rights from both parents. Of the 35 married couples in the district today, 26 of the spouses are from other districts or islands. Of the other nine, five are from other tapere within the district, three from the same tapere but different minor lineages within it, and the last one is a marriage between parallel cousins which is condoned but not approved.

Chapter 13

TENURE REFORM AND PRODUCTIVITY

Early experiments in increasing productivity

Both the Resident and the government of New Zealand were of the opinion that the indigenous system of land tenure in the Cook Islands was an obstacle to productivity.[1] Changes were therefore proposed, as a result of which, it was assumed, increases in agricultural exports would automatically follow.

The principal innovation aimed at (apart from provisions designed to facilitate European settlement, as discussed in chapter 10) was the introduction of a system of registered titles to ensure security of tenure for the occupying Maori farmer. In addition to this major reform, improvements in output were also expected to result from the abolition of tribute to chiefs (or its reduction and commutation to a money value) and from the exclusion of 'parasitic' relatives from rights in the land. Given these changes, Gudgeon considered that Rarotonga's annual output of copra (which was then two hundred tons) could, and should, rise to fifteen hundred tons and that this applied 'with almost equal force to coffee, arrowroot and vanilla, all of which might be more largely cultivated and no doubt will be, whenever the rights of those who cultivate the land

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1 It was New Zealand's ambition that the Cook Islands should become an outlet for her exports as well as a source for her requirements of tropical fruits and raw materials.

have been dealt with in a comprehensive and liberal spirit'. Fixity of tenure alone, he declared, would increase the trade of the islands sevenfold.[1]

Gudgeon was in the unique position of being able to observe the situation at first hand, draft his own plan and legislation, and then put his policy into effect. However, once the Land Court had completed its first year's work it became apparent that the desired increases in productivity were not going to come about as a reaction to changes in tenure alone, and in 1904 Gudgeon requested the New Zealand government that he be granted the power to force the island people to plant their lands.[2] Such a step was essential, he felt, since the indigenous people were 'mere children, and if they are to progress the progression must be forced on them'.[3] His request was declined.

Subsequent attempts to increase productivity were in the nature of a series of bluffs and threats. 'Let this be a notice to all of you,' he said in a public statement to the people of Avarua district, 'that in two years from this date there will be a tutaka [inspection] over all the lands.... The result of that tutaka will be published and the Federal Council will then consider what punishment ought to be inflicted on those who have neglected their lands.'[4] Temporarily at least the desired effect was achieved, for

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1 Gudgeon, New Zealand Illustrated Magazine 2:417. Gudgeon's agrarian policy followed the broad pattern of the thinking of Adam Smith, and was not dissimilar to that of Sir Hubert Murray in Papua, Dr Solf in Western Samoa, Telfer-Campbell in the Gilbert Islands, and other island administrators of that day.

2 Such power had been granted to Dr Solf, the German administrator of Samoa, whose work Gudgeon watched and admired.

3 Gudgeon to Mills, 12.9.1904 NZPP A3 1905. 'The Polynesian,' he claimed, 'will perform no useful act until he is compelled to do so.' - Gudgeon, New Zealand Illustrated Magazine 2:418.

4 Gudgeon, Te Karere September 1905.

eighteen months later mission reports describe the valleys as being more intensively cultivated than ever before, and even some of the steep hill-sides were being cropped.[1] There was a concomitant rise in the volume of exports.[2]

Compulsive pressures were found to be only partially successful and the next step he envisaged was the possibility of some form of financial assistance and skilled advisory staff to encourage Maoris to plant unused land. An element of compulsion was, nevertheless, still present. Proceeding from the doubtful premise that it was 'the duty of the administration to see that all waste lands are beneficially occupied as a return for the protection afforded to the owners by the British law and mana', he gave the Maoris three alternatives in respect to their 'waste' lands. Firstly, they could lease them to Europeans; secondly, they could accept government 'aid' to plant the lands with coconuts; or thirdly, if they were not prepared to accept either of these alternatives, the government threatened to 'take the land for small plantations under the powers conferred by Section 3 of the Cook and Other Islands Government Act of 1904'.[3] While a plan for government aid was outlined, it was never finally drafted or implemented and, as Gudgeon was aware, the New Zealand government of 1906 would neither allow him to force leasing nor to confiscate the land.

At the same time a bill was submitted to the Federal Council making provision for the taxing of land which was 'unimproved and unplanted'.[4] The Council, which was aware

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1 *Te Karere* January 1907.

2 See tables 1A and 1B, pages 252-3.

3 Gudgeon, *Cook Islands Gazette* 1.8.1906.

4 'The Unimproved Land Tax Ordinance' 1906.

of the consequences of not passing required legislation, endorsed the bill and it became law. It provided that the Resident could impose a tax of up to one shilling per acre per annum on such lands, but since Gudgeon had only limited administrative staff and inadequate funds for more, the inspection of the lands and the reporting of those who were liable for taxation under the ordinance was made the responsibility of the Island Councils. As the proposal never had any popular support, and as councillors were mostly chiefs who had more unused land than anyone else, it is not surprising that no such inspections or reports were ever carried out, and that no revenue was ever collected under this ordinance.

Gudgeon was admittedly not able to have all aspects of his reform programme implemented in full, but he did succeed in clothing all the planting lands of Rarotonga and Mauke with registered titles. At the time of his retirement, in a review of his ten years administration of the group, he expressed the opinion that: 'The first in importance of all the work we have carried to a satisfactory conclusion is the survey and definition of the titles of the lands owned by the natives.'[1]

Productivity changes since annexation[2]

In order to determine the extent to which the pattern of agricultural exports can be related to the 'survey and

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[1] Gudgeon, Cook Islands Gazette 28.1.1909.

[2] Unless otherwise stated, all cash values quoted in this chapter are standardized to a common buying value. Details of the price index used are given in appendix C. As the income of the islands was almost entirely dependent on agricultural exports, their value gives an approximate measure of the average level (but not range) of non-subsistence consumption. Internal trade within the group was insignificant, as was income from employment prior to 1950.

definition of the titles of the lands', it is proposed to examine export statistics for the decades 1906-15, 1921-30 and 1950-9.[1] In addition to figures for the group as a whole, those for the islands of Mauke and Mangaia will be compared and used as a 'control', for whereas in Mauke the planting lands had been given 'freehold' titles by the Court before 1906, no planting land on Mangaia has ever been dealt with by the Court.

During the decade 1906-15[2] the volume of exports increased considerably and the annual income per capita from agricultural production grew to about double that of the preceding decade (nevertheless, per capita income during the later period probably did not greatly exceed that obtaining in the 1880s).[3]

As shown by a comparison of tables 1A and 1B, a part of this increase was due to a rise in market prices for the commodities concerned, and the balance to an increase in output. There was a slight increase in the production of copra, while exports of citrus fruits reached double the volume for the previous decade. Neither of these increases, however, can be attributed to changes in land tenure,[4] for the coconut and citrus trees which were

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1 The only three decades since annexation during which the volume and value of exports has not been depressed by the effects of world wars or trade depressions.

2 The decade 1906-15 (inclusive) was chosen as it was not until 1906 that the bulk of the planting lands of Rarotonga and Mauke were clothed with Court titles, and after 1915 export production fell sharply due to exigencies of World War I.

3 Comparison with the 1880s is difficult owing to the absence of any price index for that period, but even assuming that money values did not drop at all between 1881 and 1905, per capita income for the five-year period 1881-5 (the only years for which export values have been located) was in the region of £15 to £20.

4 Official statements frequently claimed that they were due to the work of the Land Court; e.g. Northcroft (the then Resident) claimed in 1914 that: 'Individualizing the lands at Rarotonga is undoubtedly the cause of the present prosperity.' - Northcroft to Pomare, 27.5.1914 NZPP 1914.

Table 1A

EXPORTS OF AGRICULTURAL PRODUCE FROM THE COOK ISLANDS 1895-1905
(Omitting 1901 for which year figures are not available)

This first table is included for rough comparison only, and cannot be compared directly with later tables for the following reasons:

1. while figures for 1902-5 are for the whole Cook group, those for 1895-1900 are for the Southern Group only;
2. while figures from 1902 onwards include all exports from the group, those before 1900 do not include the shipments of produce from the outer Southern Group islands (i.e. excluding Rarotonga) to Tahiti direct. The direct trade by native schooners between the outer islands and Tahiti was considerable and exports shown for those years are probably at least 25 per cent less than actual for that reason.

Year	Copra		Citrus		Tomatoes		Coffee		Bananas		Pines		Other agric. produce	Total value[1]	Corrected value[2]	Population	Income per capita[3]
	Tons	£	C/s	£	C/s	£	1000 lbs	£	C/s	£	C/s	£	£	£	£		£
1895	971	7,253	11,397	2,258			227	7,752	5,496	309			1,498	19,070	66,460	7,180 E	9. 5. 1
1896	765	5,309	19,863	3,409			137	4,310	5,313	305			2,153	15,486	52,495	7,005 E	7. 9.11
1897	669	5,380	21,331	3,965			372	10,754	1,890	131	3,592	180	1,341	21,751	71,315	6,825 E	10. 9. 0
1898	499	4,505	21,562	3,384			109	2,389	3,304	239	685	101	590	11,208	35,694	6,682 E	5. 6.10
1899	682	6,218	21,481	1,769			100	1,819	12,600	717	3,918	321	743	11,587	40,656	6,540 E	6. 4. 3
1900	988	7,120	56,466	5,462			46	1,025	23,955	1,574	21,796	1,158	1,103	17,420	59,050	6,381 E	9. 5. 1
1901	No figures available																
1902	1,310	11,650	36,652	6,120			43	720	34,512	4,150	3,936	650	1,911	25,201	79,750	8,230 E	9.13.10
1903	1,105	9,313	60,346	10,050			138	2,310	32,560	4,800	5,663	900	2,589	29,962	97,915	8,213	11.18. 5
1904	1,272	15,950	79,330	9,600			58	973	45,804	7,400	5,725	680	1,696	36,299	121,401	8,170 E	14.17. 2
1905	1,212	13,974	76,080	9,364			13	212	53,507	8,909	4,378	616	682	33,757	102,294	8,028	12.14.10

E = estimate of population derived from mission and government records (Southern Group only for period 1895-1900).

Note: While the bulk of fresh fruit has always been shipped in case lots, some bananas were shipped on the bunch and in a few instances pines and oranges were recorded by number of fruit rather than by the case. These have been converted to case lots at the rate of one and a half bunches of bananas per case, 12 pineapples per case and 150 oranges per case. Accurate comparison of the volume of fruit exports is not possible owing to a lack of standardization of case sizes, though the one and a half bushel case has been the most common throughout.

[1] I.e. value in the currency of that date.

[2] Corrected to 1955 values according to the price index shown in appendix C.

[3] In 1955 values.

Table 1B

EXPORTS OF AGRICULTURAL PRODUCE FROM THE COOK ISLANDS 1906-15

Year	Copra		Citrus		Tomatoes		Coffee		Bananas		Pines		Other agric. produce	Total value	Corrected value	Population	Income per capita
	Tons	£	C/s	£	C/s	£	1000 lbs	£	C/s	£	C/s	£	£	£	£		£
1906	948	13,387	86,220	10,975			104	2,175	81,733	10,445	4,777	590	3,013	40,582	121,868	8,518	14. 6. 2
1907	934	15,491	104,201	18,235			45	944	85,113	12,910	5,352	1,070	1,361	50,001	162,341	8,536 E	19. 0. 5
1908	1,317	17,368	79,046	21,341			57	1,302	95,697	15,433	9,368	936	1,401	57,781	186,993	8,554 E	21.17. 2
1909	1,705	25,946	98,007	17,200			22	493	105,683	19,426	5,650	708	793	64,566	211,692	8,572 E	24.13.11
1910	1,535	27,281	94,024	14,220			58	1,243	114,444	35,807	5,128	512	1,128	80,191	260,360	8,600 E	30. 5. 6
1911	1,695	31,151	107,612	19,922			16	430	112,814	24,907	3,792	234	3,105	79,749	260,617	8,626	30. 4. 2
1912	1,340	26,276	106,878	16,060			67	1,950	95,532	33,200	5,110	501	3,596	81,583	258,994	8,653 E	29.18. 6
1913	1,429	33,679	107,728	16,852			34	970	106,413	35,700	2,329	270	3,568	91,039	282,730	8,680 E	32.11. 4
1914	922	14,630	114,336	18,579	1,201	600	32	877	86,083	28,939	3,691	460	3,128	67,213	202,449	8,708 E	23. 4. 8
1915	773	14,114	98,447	20,863	13,119	5,947	33	825	61,988	18,592	1,282	250	2,285	62,876	176,123	8,736 E	20. 3. 2
Av.per year 1906-15	1,260		99,650						94,550		4,648				212,417	8,618	24.12. 6
Av.per capita	0.15 Tons		11.6 C/s						11.0 C/s		5.4 C/s						

producing in 1906-15 must necessarily have been planted prior to the establishment of the Land Court.[1] It could, of course, be argued that the trees had been producing similar amounts previously, but that they were not being harvested owing to land disputes. Such, however, was never claimed by the protagonists of reform, but rather that the tenure system had discouraged the planting of trees. In view of the marked improvement in shipping facilities and the frequent claims in the previous decade that large quantities of citrus fruits were wasted through the lack of shipping, the increase must be attributed primarily to improvements in transport services.[2]

There was a significant drop in the output of coffee, but this was due to a leaf blight which first manifested itself in 1898. No concerted effort was ever made to combat the blight and the coffee trade died slowly away.[3] The pineapple trade remained at much the same level as it had been, exports remaining insignificant owing to the low price and limited market.

Banana output increased five-fold, and while the Land Court appears to have had no significant effect on the output of other produce at this stage, it is possible that it had some influence on the increase of banana exports. Two other factors which were also partly responsible were the availability of more frequent and regular steam vessels,

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1 It is physically possible that a portion of the crop in the later part of the period could have come from trees planted after the Court was established, but if this were so one would expect a rise towards the end of the period, whereas a slight downward trend is in fact noticeable.

2 Shipping services to New Zealand markets were greatly improved during the first decade of the century, and the inauguration of a scheduled steamer service facilitated increased exports of perishable fruits.

3 Exports dropped steadily until by the 1930s they were negligible. Some small-scale plantings have been undertaken in recent years, but these are not yet in bearing.

and the compulsive pressures applied by the Resident. The degree to which each factor was responsible is impossible to determine accurately, though on Mauke, where the Land Court had determined title to the planting lands, no banana export industry developed, whereas on Mangaia (where the Land Court had not worked) a modest trade in bananas did emerge.[1] Likewise, while Mauke did not export pineapples at all during the period, Mangaia did so to a small extent. A Court title to the land, it would appear, was a less important factor than shipping and administrative action.

Furthermore, informants stated that the bulk of banana output at that period was organized on a minor lineage basis by the various chiefs, and this claim is given some support by the fact that the trade developed on Rarotonga and Mangaia where chiefly power was strong, but not on Mauke, where chiefly powers had been seriously disturbed since 1904 at least. This would indicate, as the evidence from the Protectorate period suggests, that organization by the chiefs was at that stage conducive to higher output.

During and after World War I shipping was severely disrupted and exports accordingly fell to a very low level. The next 'normal' decade was from 1921 to 1930, after which the world trade depression caused a further disruption of the economy. During that decade the average per capita real income was slightly lower than that obtaining in 1906-15, though the volume of exports was about the same.[2] This was mainly due to an increase in population and consequent drop in production per capita. The output of copra increased, in all probability owing to the additional trees planted under administrative pressures applied during

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1 See tables 2A and 2B.

2 See table 3.

Table 2A: EXPORTS OF AGRICULTURAL PRODUCE FROM MAUKE 1906-15

Year	Copra		Citrus		Coffee	Bananas		Pines		Other agric. produce	Population
	Total tons	Tons per capita	Total cases	Cases per capita	1000 lbs	Total cases	Cases per capita	Total cases	Cases per capita	£	
1906	58	0.130	8,877	19.9	1			15	0.03	-	446
1907	68	0.152	10,904	24.3	5			-	0.00	-	448 E
1908	94	0.209	12,384	27.5	1			13	0.03	-	450 E
1909	181	0.400	5,025	11.1	-			-	0.00	-	452 E
1910	103	0.227	5,450	12.0	-			-	0.00	-	454 E
1911	193	0.422	7,132	15.6	1						457
1912	166	0.359	8,882	19.0	-						463 E
1913	95	0.202	9,880	21.0	-						470 E
1914	136	0.286	5,422	11.4	-						476 E
1915	15	0.031	8,446	17.5	-						483 E
Av.per year	111	0.242	8,240	17.9							460

Table 2B: EXPORTS OF AGRICULTURAL PRODUCE FROM MANGAIA 1906-15

1906	51	0.033	11,690	7.6	30	12,028	7.9	1,681	1.1	2,263	1,531
1907	67	0.044	14,459	9.5	27	11,248	7.4	1,699	1.1	835	1,519 E
1908	43	0.029	8,972	5.6	26	11,151	7.4	2,320	1.5	1,140	1,507 E
1909	101	0.068	19,611	13.1	12	8,778	5.9	1,066	0.7	593	1,495 E
1910	149	0.100	10,800	7.3	41	7,281	4.9	466	0.3	237	1,483 E
1911	171	0.116	12,996	8.8	4	5,216	3.5	275	0.2	50	1,471
1912	141	0.099	14,279	10.1	31	3,571	2.5	366	0.3	25	1,426 E
1913	160	0.116	13,618	9.9	22	2,919	2.1	57	0.0	510	1,381 E
1914	21	0.016	18,869	14.1	25	2,512	1.9	16	0.0	620	1,336 E
1915	67	0.052	8,814	6.8	17	694	0.5	97	0.1	350	1,291 E
Av.per year	97.1	0.067	13,411	9.3	24	6,540	4.4	804	0.5	662	1,444

Table 3

EXPORTS OF AGRICULTURAL PRODUCE FROM THE COOK ISLANDS 1921-30

Year	Copra		Citrus		Tomatoes		Coffee		Bananas		Pines		Other agric. produce	Total value	Corr. value	Popula-tion	Income per capita
	Tons	£	C/s	£	C/s	£	1000 lbs	£	C/s	£	C/s	£	£				£
1921	803	11,841	57,523	22,519	34,457	11,169	8	608	52,388	21,680	2,062	361	1,093	69,271	126,870	9,459	13. 8. 3
1922	2,222	32,095	117,238	41,018	37,236	17,417	1	50	88,974	42,048	301	84	2,098	134,810	268,011	9,583 E	27.19. 4
1923	2,018	26,205	139,820	43,956	24,578	10,033	2	95	70,206	32,719	107	16	1,435	114,459	225,757	9,708 E	23. 5. 1
1924	2,250	43,173	178,528	51,844	25,438	13,745	1	45	78,453	40,141	704	196	1,012	150,156	288,761	9,832 E	29. 7. 5
1925	2,440	46,516	95,067	37,227	61,084	23,275	12	508	85,451	33,893	20	5	1,126	142,550	268,962	9,957 E	27. 0. 2
1926	1,245	25,983	169,308	57,488	72,087	26,881	-	-	30,766	16,608	-	-	1,028	127,988	240,127	10,082	23.16. 3
1927	1,676	35,494	123,021	57,236	41,080	19,319	1	26	45,470	21,296	-	-	1,326	134,697	254,625	10,298 E	24.14. 4
1928	1,770	33,071	142,315	58,030	51,955	17,649	5	188	47,480	19,690	-	-	944	129,572	244,015	10,514 E	23. 4. 2
1929	2,020	28,648	106,187	47,596	52,685	16,760	4	57	51,026	26,946	-	-	1,760	121,767	229,749	10,731 E	21. 8. 2
1930	2,143	23,478	128,268	39,080	30,263	9,870	1	22	53,493	34,272	-	-	2,776	109,498	211,386	10,947 E	19. 6. 2
Av.per year	1,859		125,727		43,086				60,364		319				235,826	10,111	23. 6.11
Av.per capita	0.18		12.4		4.3				6.0								

the earlier period. It is most unlikely that the extra planting resulted from tenure changes, for on Mauke and Mangaia, where the administrative pressures to plant were least felt, the output fell in both absolute and per capita terms at very similar rates, despite the fact that the former island had been investigated by the Court and the latter had not.[1]

Citrus exports were higher in the latter decade than in the former, but this was due to better market conditions. No one claimed that the land tenure pattern had any effect on this crop, for during the earlier period the planting of it had been discouraged owing to the flooded state of the market, and there is every indication that relatively few trees were planted after the turn of the century.

Tomatoes were introduced, and their successful establishment was due in part at least to the introduction of radio communication which was necessary for the timing of shipments of this perishable crop. The Mauke people, despite registered land titles, did not take to planting tomatoes, but the Mangaians did, though never on a large scale.[2] There is thus no indication that the work of the Court contributed to the rise of this trade. Banana and pineapple production dropped: probably due to the reduction of enforced planting and the introduction of tomatoes as a more lucrative alternative crop.

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[1] See tables 4A and 4B. Unfortunately no records of copra exports from individual islands could be traced for the years 1921-9, and the above conclusions are based on the years 1930-40. Even during these years there were some significant gaps in the data.

[2] The difference was not due to shipping services, as (no doubt, due to its larger citrus crop) Mauke averaged slightly more shipping calls during the period than Mangaia. (Here again we are forced to rely on the 1930-40 statistics.)

Table 4A: EXPORTS OF AGRICULTURAL PRODUCE FROM MAUKE 1930-40

Year	Copra		Citrus		Tomatoes		Coffee	Bananas		Pines		Other agric. produce	Population
	Total tons	Tons per capita	Total cases	Cases per capita	Total cases	Cases per capita	1000 lbs	Total cases	Cases per capita	Total cases	Cases per capita	£	
1930	158	0.279	9,024	15.9									567 E
1931	100	0.172	11,658	20.6									581 E
1932	?	?	2,820	4.7									595 E
1933	24	0.039	11,290	18.6									609 E
1934	125	0.200	5,650	9.1									623 E
1935	65	0.102	15,494	24.3									637 E
1936	?	?	11,410	17.5									652
1937	?	?	11,785	17.6									669 E
1938	?	?	11,373	16.6									686 E
1939	?	?	7,834	11.1									703 E
1940	-	0.000	24,824	34.5									720 E
Av.per year	6 yrs 79	6 yrs 0.132	11 yrs 11,198	11 yrs 17.5									640

Table 4B: EXPORTS OF AGRICULTURAL PRODUCE FROM MANGAIA 1930-40

1930	171	0.128	5,141	3.9	73	0.1	5	198	0.1				1,333 E
1931	34	0.025	7,466	5.5	167	0.1	-	200	0.1			8	1,354 E
1932	77	0.056	10,651	7.7	900	0.7	5	-	0.0				1,375 E
1933	39	0.028	7,500	5.4	96	0.1	11	-	0.0				1,396 E
1934	78	0.055	13,168	9.2	-	0.0	1	-	0.0				1,417 E
1935	?	?	(8,510?)	?	?	?	?	?	?				1,438 E
1936	126	0.086	1,061	0.7	-	0.0	7	-	0.0				1,459
1937	48	0.032	11,545	7.7	455	0.3	15	-	0.0				1,502 E
1938	25	0.016	21,112	13.6	1,000	0.6	-	202	0.1				1,545 E
1939	?	?	17,632	11.1	1,595	1.0	9	229	0.1				1,588 E
1940	-	0.000	33,161	20.3	2,456	1.5	-	121	0.1				1,631 E
Av.per year	9 yrs 66.4	9 yrs 0.047	10 yrs 12,809	10 yrs 8.5	10 yrs 674	10 yrs 0.4	10 yrs 5.3	10 yrs 95	10 yrs 0.0				1,458

Note: During 1936 and 1937 the majority of growers on Mangaia refused to sell owing to low prices. - NZPP A3 1937:15.

Before the islands' economy had fully recovered from the trade depression it was again disrupted by the onset of World War II and its aftermath. Shipping and marketing services had returned to normal by 1950 and the figures for the decade 1950-9 (the latest available) are shown in table 5. Per capita income from agriculture had dropped to about half the level of 1906-15.[1] Copra production in absolute terms averaged 36 per cent less than the 1921-30 volume, and 5 per cent less than its 1906-15 volume. In per capita terms the output for the current decade was 61 per cent less than that in 1921-30. As the tables show, citrus exports fell to less than half their 1921-30 volume (or less than one quarter in per capita terms) and bananas to less than one per cent of their 1921-30 volume. Only tomatoes retained their earlier level per capita. The outstanding exception to the general trend was the pineapple trade, which showed a marked increase, but almost the whole crop was grown on Mangaia.

Production of copra in both Mauke and Mangaia has fallen in both absolute and per capita terms, though more heavily in the latter.[2] Production of citrus has also fallen in both islands (as for the group as a whole) though in this instance the drop is more pronounced in Mauke.

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1 In view of the increasing proportion of income spent on imported foods (as shown on page 263) and of recent years on purchased local foods as well, and assuming a corresponding decline in production for subsistence, total consumption must have dropped at a faster rate than the above figures alone would suggest. The actual change in personal living standards is, however, difficult to determine, for income from non-agricultural sources has increased markedly since World War II, and the proportion of income spent on ecclesiastical affairs, ceremonial activities and tribal projects (such as the purchase of schooners, the erection of churches and schools and of ornate dwellings for high chiefs) appears to have diminished steadily, leaving a higher residue for personal consumption.

2 See tables 6A and 6B.

Table 5

EXPORTS OF AGRICULTURAL PRODUCE FROM THE COOK ISLANDS 1950-9

Year	Copra		Citrus		Tomatoes		Coffee		Bananas		Pines		Other agric. produce	Total value	Corrected value	Popula-tion	Income per capita
	Tons	£	C/s	£	C/s	£	1000 lbs	£	C/s	£	C/s	£	£	£	£		£
1950	1,106	60,249	33,173	33,676	15,067	11,128			89	42	3,558	2,385		107,480	144,268	15,030	9.12. 0
1951	1,320	71,608	15,038	15,705	27,157	29,021			36	29	7,307	5,846		122,209	147,595	15,079	9.15. 9
1952	1,336	86,702	60,760	69,702	59,844	41,004			110	85	15,195	13,086		210,579	236,075	15,343	15. 7. 9
1953	1,094	74,276	38,616	49,808	98,957	77,469			99	87	30,621	25,393		227,033	243,336	15,657	15.10.10
1954	1,416	101,326	55,308	74,830	52,429	38,599			181	174	22,748	19,678		234,607	240,376	15,899	15. 2. 4
1955	1,076	71,684	39,453	55,138	91,912	99,978			946	906	15,710	13,858		241,464	241,464	16,424	14.14. 0
1956	1,439	87,573	61,403	86,641	96,599	101,660			1,105	1,071	22,801	13,526		290,471	280,648	16,680	16.16. 6
1957	933	52,238	80,082	111,626	109,398	65,874			1,288	1,359	5,455	4,688		235,785	223,070	16,925	13. 3. 7
1958	944	48,486	78,279	112,927	71,866	53,676			751	793	2,060	1,886		217,768	197,254	17,654	11. 3. 4
1959	1,321	99,565	106,951	155,037	85,959	58,238			1,055	865	1,472	1,511		315,216	275,057	18,041	15. 4.11
Av.per year	1,198		56,906		70,919				566		12,693				222,914	16,273	13.13. 1
Av.per capita	0.07		3.5		4.4				0.03		0.8						

Table 6A: EXPORTS OF AGRICULTURAL PRODUCE FROM MAUKE 1950-9

Year	Copra		Citrus		Tomatoes		Coffee	Bananas		Pines		Other agric. produce	Population
	Total tons	Tons per capita	Total cases	Cases per capita	Total cases	Cases per capita	1000 lbs	Total cases	Cases per capita	Total cases	Cases per capita		
1950	32	0.039	1,161	1.4	-	-				-			825
1951	40	0.047	-	0.0	-	-				99	0.1		847
1952	97	0.113	1,704	2.0	309	0.4				92	0.1		861 E
1953	65	0.074	1,293	1.5	18	0.0				351	0.4		875
1954	42	0.046	1,991	2.2	-	-				-			905
1955	23	0.025	524	0.6	-	-				264	0.3		922
1956	26	0.027	525	0.6	-	-				-			947
1957	33	0.040	712	0.9	-	-				-			815
1958	36	0.043	1,047	1.2	-	-				-			842
1959	38	0.043	5,843	6.5	359	0.4				-			895
Av.per year	40	0.050	1,480	1.7	69	0.1				81	0.1		873

Table 6B: EXPORTS OF AGRICULTURAL PRODUCE FROM MANGAIA 1950-9

1950	40	0.020	15,650	8.0	-	0.0		-		3,533	1.8		1,958
1951	22	0.011	-	0.0	255	0.1		-		6,586	3.2		2,063
1952	15	0.008	7,817	4.0	2,411	1.2		-		14,655	7.4		1,970 E
1953	41	0.022	17,020	9.1	1,769	1.0		-		17,410	9.3		1,880
1954	7	0.004	2,268	1.2	1,702	0.9		-		21,768	11.2		1,939
1955	10	0.005	7,982	4.0	112	0.1		105	0.1	14,178	7.2		1,979
1956	4	0.002	3,435	1.7	2,707	1.3		-		24,002	11.9		2,021
1957	1	0.000	4,135	2.1	19	0.0		266	0.1	5,455	2.8		1,970
1958	10	0.005	1,097	0.5	3,207	1.6		258	0.1	2,060	1.0		2,060
1959	7	0.003	144	0.1	7,090	3.2	2	407	0.2	1,472	0.7	531 bags c/n	2,185
Av.per year	15.7	0.008	5,955	3.07	1,927	0.9		103	-	11,112	5.7		2,003

Pineapple exports, which boomed on Mangaia in the mid-1950s (until a sudden price recession in 1956 made further planting uneconomic) have never achieved a fraction of the Mangaia volume on Mauke. The banana trade, once the biggest source of income in the islands, has brought in less than one shilling per capita per annum during the last decade. In general the prices paid for fruit have been as good or better than those paid in the two previous decades examined, and while shipping has always been a problem, it appears to have been no more of a hindrance in the 1950s than it was in earlier years.

The causes of productivity decline

It seems clear, therefore, that far from there being an increase in agricultural production during the period from 1906 to 1959 there has, in fact, been a general decline, more particularly when measured on a per capita basis, and that where in the case of individual products an increase did take place, this was seldom attributable to changes in the tenure pattern. It now remains to discuss in more detail various reasons which can be held to account for this decline and the extent to which tenure reform may be said to be one of them.

One cause to which the decline has been attributed is that the increased population uses so much more land for subsistence that there is insufficient left for commercial crops. It is probably true that more land is used for subsistence cultivation today than in the earlier decades of this century, though the area would not be proportionate to the increase in population owing to a considerable increase in imports of food.[1] Moreover, the total area of

[1] Converted to equivalent values the imports of foodstuffs into the Cook Islands in the five-year period 1906-10 inclusive averaged £53,649 per annum, as against £213,153 for the period 1955-9 inclusive. In per capita terms the amount has more than doubled: from £6.5.5 per annum in the earlier period to £12.8.10 in the latter.

land in use for subsistence probably does not exceed 2,800 acres,[1] leaving some 25,000 acres of land which is suitable for agriculture and/or tree crops.[2]

Another view has it that the decline has resulted from the marked increase in numbers of people in the latter decade who were employed in activities other than agriculture, leaving insufficient to work the land. For the group as a whole this view is not supported by the available data which show that, while a total of 1,393 men were gainfully employed outside agriculture in 1956, the total population had increased by 4,434 since 1936 and by 8,025 since 1911.[3] The generalization nevertheless has some validity for villages like Ngatangiia and Arorangi, which are sufficiently close to the group 'capital' of Avarua for a high proportion of persons resident in those villages to commute to work in Avarua daily.

In the four tapere in Ngatangiia where field-work was carried out, of a total of 55 resident adult males 16 had full-time jobs outside the district, 25 obtained some part-time wage labour, 2 had part-time businesses, and 2

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1 This is probably a generous estimate. The F.A.O. World Census of Agriculture gave an estimate of 2,460 acres not including coconuts in 1950, but the latest 'Report on the Cook, Niue and Tokelau Islands' indicates a somewhat lower figure. - NZPP A3 1960:24. Barrau, in 1956 estimated that 0.07 to 0.10 acres per head of land was used for subsistence in Rarotonga and 0.15 to 0.20 in Atiu (excluding coconuts). - Subsistence Agriculture in Polynesia and Micronesia 26 and 29. Barrau's figures would indicate about 2,400 acres for the whole group. My own research in the four tapere known as Turangi ma Nga Mataiapo on Rarotonga showed an average of 0.252 acres in food crops other than exports. The great bulk of this, however, was used to produce crops for sale to the urban population in Avarua. On Atiu, on the other hand, where subsistence crops are not marketed, and where each household grows the bulk of its food supply, there was an average of only 0.11 acres per head in food crops.

2 Based on data in Fox and Grange, Soils...

3 Based on data in the relevant censuses.

were in receipt of superannuation.[1] Of the remaining 10, one was blind, 2 were beyond working age, and only 7 were dependent on full-time agricultural production. While almost every one of the 55 engaged in some planting for subsistence or cash cropping, only these 7 could be regarded as full-time farmers, while another 29 spent more than half of their working time in agricultural pursuits.[2] In addition, considerable numbers of persons who were born and brought up in this area now reside and work permanently in Avarua, New Zealand or elsewhere.

In view of the relative incomes obtained in agriculture as against other classes of work, and of the history of fluctuation of prices for agricultural produce, it is not surprising that agriculture is the 'last choice' for the majority of people. Paid employment, on the other hand, is not so well-paid nor as yet so secure as to allow a person to leave his land entirely. The result is that the majority take such employment as is offering but almost invariably supplement it with a little subsistence planting and with such cash cropping as time and finance permit. For the same reason, people are reluctant to lease for long periods lands which they are not utilizing fully at present.

On most islands it is not the numbers who migrate which are significant in their effect on production (for they are more than replaced by natural increase) but the calibre of the persons involved. As employment outside

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[1] In addition, some 8 women received regular incomes from work or business.

[2] On the basis of research in the Arorangi district of Rarotonga in 1950, Hercus and Faine found that of the 102 resident adult males, 21 were dependent entirely on wages, 31 supplemented their farming by wage labour, and 50 were entirely dependent on their lands for their livelihood. - Hercus and Faine, Transactions of the Royal Society of Tropical Medicine and Hygiene 45:353-62. There has been a considerable increase in the amount of wage labour offering since 1950.

agriculture gives an assured and generally much higher income than primary production, there is keen competition for skilled employment and even keener competition for the opportunity to migrate to New Zealand.[1] The processes of selection are generally in terms of intelligence, initiative and level of education, and those who 'make the grade' are lost to agriculture.[2]

In addition to the above factors, two aspects of the work of the Land Court have hindered increased output from the land. The first of these relates to the Court system of awarding succession, which has resulted in each section of land being associated with an ever-increasing number of 'owners'.[3] This is aggravated by the fact that the Court system allows no basis for leadership or organization of the heterogeneous agglomeration of 'owners' of each section. Combined with the emigration to other work or other places by the bulk of those with energy and initative, the result is frequently apathy and neglect of land.[4]

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1 Wages and salaries within the Cook Islands range from a minimum of £145 per annum to a maximum of over £1,000 per annum. The average is probably about £225. Those who migrate to New Zealand probably earn an average of £800 to £900 per annum. Current per capita income from agriculture, on the other hand, is about £15 (or say £75 per family). - See table 5. A regular stream of Cook Islanders is migrating to New Zealand to reside there permanently, and in March 1960 the number in New Zealand was given as 2,950. - NZPP A5 1960:16. In view of the rate of migration since then the figure is now probably about 3,500.

2 The bulk of emigrants to New Zealand are in the 20-35 year age group. - Ward, JPS 70:6.

3 See chapter 12.

4 Occasional enterprising Rarotongans have found that the only way to overcome the problem is to lease land from their numerous co-parceners. In one case examined in the field a man had leased an area of 1.4 acres of gardening land from his co-parceners and despite the expense in time and money of arranging meetings, providing transport and attending Land Court he considered that this course of action had been worthwhile. Cases were also encountered wherein persons had been refused leases by their co-parceners.

Assuming both islands to have been affected equally by migration, one should accordingly expect a more marked decline in productivity in Mauke than in Mangaia, for in Mangaia indigenous leadership remains and the land is held under customary tenure. An examination of tables 2, 4 and 6 shows that this is indeed the case, and further elaboration of the surrounding circumstances shows it to be more marked than the tables alone would suggest.

Most of the citrus exported from Mauke in the last decade has been from trees planted by the Administration under a scheme which is discussed in the next chapter and which does not depend on local initiative. This scheme does not apply to Mangaia. However, though the native trees are dying out on both islands, they have survived longer on Mangaia, and these factors are probably more important determinants of productivity than the tenure situation. It is in the short-term cash crops that the difference in productivity between these two islands is most marked. Mangaia built up a considerable trade in pineapples and, though a serious price drop since 1956 has brought returns very low indeed, some production has continued.[1] Mangaians have planted tomatoes each year and despite adverse shipping conditions have managed to maintain some exports. When the price of pineapples dropped suddenly in 1956 the Mangaians planned to plant bananas on a large scale, but were directed not to by the Administration on account of objections from the firm which holds a government-granted monopoly on imports of island fruits to the mainland. In recent years the Mangaians have begun replanting coffee, and an afforestation scheme for the growing

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[1] It is understood that large-scale replanting was resumed in 1961 to supply the new fruit-pulping industry in the group.

of fruit-case timber was begun in 1959. No such activity has been apparent on Mauke, and while there are doubtless a congeries of factors responsible, it appears that the fragmentation and dispersal of ownership rights is one of them.

The second inhibiting aspect of the Court's work is the inflexibility of transfer of land rights, which was first imposed by the Cook Islands Act of 1915 in order to protect the rights of the indigenous people. Those who have surplus lands are not allowed to will or sell them (though it is unlikely that many would be prepared to sell even if they were permitted to do so). They can lease, but the present multiplicity of ownership makes this a difficult procedure as well as an economically unattractive proposition to the lessors - for there are so many of them among whom the rental must be shared that there is no incentive to lease.[1] Owing to the current migration both within the islands and to New Zealand, there are many sections whereon none of the owners reside or live within working distance,[2] and which lie unused for this reason.

The degree of rigidity which has been introduced can be gauged from the following summary which shows the recognized pre-contact processes of adjustment of land rights in the first column, and the present position in the second:

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1 See e.g. Ngati Te Ora case, page 341.

2 In the area on Rarotonga where field studies were conducted, of unused land which was suitable for agriculture or tree crops, twenty-three per cent lay idle because all owners were absent in New Zealand or elsewhere; or because, though there were owners in the district, the lands concerned had been allotted by family agreement to persons who had subsequently left.

Pre-contact process	Post-contact change
1. Those processes which do not affect lineage affiliation -	
a. By acquisition of new lands:	
(i) By conquest	Stopped in the mission period and barred by statute since.
(ii) By other processes affecting whole lineages (e.g. admittance of immigrant lineages, or voluntary transfer of lineage and lands).	Barred by statute.
b. By redistribution <u>within</u> the lineage:	
(i) By will	Barred by statute.
(ii) By intra-lineage adoption.	Controlled and generally discouraged by the Land Court.
(iii) By allocation by the head of the lineage	Limited by statute, and barred by Appellate Court decision.
(iv) By gift (not necessarily within the lineage, nor necessarily dependent on change of affiliation).	Barred by statute.
(v) By partition	Provided for by statute but strongly discouraged by the Land Court.[1]
2. Those practices which are concomitant on a change of lineage affiliation -	
(i) By marrying out (except to the extent of express provision or reinstatement)	Barred by Appellate Court decision.
(ii) By inter-lineage adoption.	Controlled and discouraged by Land Court.
(iii) By banishment of offenders.	Barred by statute.

[1] In view of the existing degree of fragmentation of title (which is the basic cause of current pressure for partition), free partitioning of the land would rapidly exacerbate the existing degree of fragmentation of plots.

(iv) By admission of refugees and other outsiders.	Barred by statute from 1915-46, but existence of a new provision since 1946 (which is subject to the approval of the Land Court) is little known in this connection.
(v) By voluntary departure.	Barred by Appellate Court decision.
(vi) By admittance of secondary members.	As for (iv) above.

It will be noted that the most common modes of transfer of rights have been blocked not by statute but by rulings of the Land Court and the Appellate Court. The only alternative provisions which have been made are firstly those for leases (which are difficult to obtain for the reasons stated) and secondly those for occupation rights. This latter change, which was introduced in 1946, is but little known to the people except in relation to the Citrus Replanting Scheme, which is discussed in the following chapter. Moreover, the granting of such rights is left to the discretion of the Court, and it is not known what attitude it would adopt if the people did wish to transfer rights other than for citrus replanting. The present situation in relation to the transfer of rights to land restricts the islander's spatial mobility in agriculture, as well as his maneouvreability within the ownership group.

Though the tenure situation may not have been the major cause of the overall decline in productivity in the group, the evidence does indicate that the issue of registered freehold titles by the Land Court of itself made little if any contribution to output in the early decades of the century, and of recent years has had a negative effect. It is not intended to imply that security of tenure was not desirable or that the indigenous tenure system was conducive to maximum output (for the case of Mangaia clearly shows that it was not). Rather, it illustrates

the fact that security of tenure is of little value if it is provided in a form which is not adapted to the people's needs and which inhibits the optimum use of the land. As the following chapter will show, even when security of tenure is provided in a form which meets these requirements, it must also be complemented by other measures if major increases in productivity are to result.

Chapter 14

RECENT DEVELOPMENTS

Since World War II several new forms of landholding and exploitation have been tried, most of them initiated in part at least in order to overcome difficulties resulting from the existing tenure system. All of these subsidiary systems appear to be more productive than the dominant 'freehold' system within which they operate, thus indicating that the problems created during the first half of the century are not insuperable and that, given appropriate conditions, significant improvements could result. The most important of these, the Occupation Rights scheme, exemplifies the tremendous productivity increases which can take place when a major break-through is made in the existing tenure system, coupled with the application of modern technical facilities.

The Occupation Rights scheme

During the 1930s there was a marked decline in citrus exports. It was due in part to the low prices paid for the fruit, but principally to the fact that most of the trees were old and were suffering from a variety of untreated diseases. Being planted at random through bush and undergrowth, caring for them was arduous and time-consuming. Though the government had tried to persuade growers to prune, spray and manure their trees, the attempt had not been successful for the growers were not convinced of the efficacy of the practices expounded nor of the financial

returns that would have resulted. Moreover, given the haphazard distribution of the trees it is doubtful whether efficient cultural practices could have been carried out economically, and in 1935 a new Director of Agriculture expressed the view that the existing trees should be replaced by 'new plantations to be established in conformity with modern practices'.[1]

In the following year the island fruit-growers sent two petitions to the New Zealand Parliament, as a result of which a parliamentary delegation was sent to investigate the fruit export industry at first hand. The delegation's report emphasized the need for a long-term citrus replanting scheme whereby indigenous growers would be encouraged to establish modern commercial plantations with the guidance and assistance of an expanded Department of Agriculture.[2] Each plot was to be on land defined by the Registrar of the Land Court to ensure security of tenure to the planter 'in order that he may have sufficient inducement to care for his trees and harvest the crop as the rightful owner'.[3] Improved processing, shipping and marketing facilities were also proposed.

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1 NZPP A3 1936:13.

2 Robertson, Holland and Hunter, NZPP H 44A 1936:7. This was the first provision for long-term agricultural credit in the group. Prior to that time the only credit available was from traders, usually for the purchase of consumption goods. Though credit had been limited or outlawed since the mid-nineteenth century, the controls had not been very effective and indebtedness to traders had been a major social and economic problem. Prior to the application of new controls on debt in 1900 the Court ordered some 253 Rarotongans to pay £1,233.12.8 in outstanding debts to traders - approximately thirty per cent of total income to Rarotongan growers in that year. - Cook Islands Gazette 19.12.1900. In 1936 it was estimated that Rarotongans were indebted to traders to the extent of £50,000, or just on two whole years' income from agriculture. - Hansard 247:331.

3 Robertson, Holland and Hunter, NZPP H 44A 1936:8.

The report was adopted by parliament[1] and in 1937 the government assumed control of all exporting and marketing of Cook Islands fruit.[2] In the same year a government nursery was established and some 23,000 citrus seedlings were grown for distribution to native growers.[3] During subsequent years these and other trees were made available to interested growers along with information about the planting and maintenance of citrus orchards, but owing to inadequate attention many of them soon died out. As citrus prices were low, and as past experiences had been unfavourable, few growers were prepared to invest the effort and expenditure necessary to bring a plot into bearing on the lines recommended, and by 1945 only fifty-five orchards had been planted under the scheme, and of them all but twenty-six were described as 'fair...to hopeless'.[4]

In that year the government introduced a new plan under which the Department of Agriculture would finance and control the planting of citrus groves, at the same time instructing the native growers in the art of citriculture. Once the trees came into bearing the government intended to recoup its outlay by proportionate deductions from the sale of fruit, paying the balance to the grower. As security, however, the grower was required to lease the plot to the government for a sufficient period to ensure repayment of the debt incurred. It was not the government's intention to farm the land and leave the villager as a landlord, but merely to ensure repayment for the technical skills and materials supplied in order to bring the plots into bearing.

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1 Hansard 247:325-37.

2 'Fruit Control Regulations' 1937.

3 NZPP A3 1938:7.

4 NZPP A3 1945:9.

Owing to the insistence on leasing, the island people were suspicious of the government's motives, fearing that the debt would never be paid off and that their land might then be confiscated. Some even saw it as a conscious attempt to acquire Maori lands.[1] Despite the abundant goodwill which inspired its formulation, and the eagerness of Maori growers for the credit and guidance which would assure high-yielding orchards, almost nobody would risk title to his land by joining the scheme.

When Judge Harvey of the New Zealand Maori Land Court visited the Cook Islands in 1946 at the invitation of the Administration, he discussed the matter of citrus replanting with growers and others at public and private meetings and became convinced that the only obstacle to the enthusiastic public acceptance of the scheme was an adequate assurance to native growers that their lands would be protected.[2] Legislative protection was accordingly provided and provision was made whereby multiple owners could vest any particular portion of their lands in one of their number. The vestee was to be awarded an 'Occupation Right' by the Land Court and thereupon became regarded as the sole owner of the land concerned for such period as he continued to occupy.[3]

The response from growers was immediate, and since the replanting scheme has been based on the 'Occupation Rights' legislation the Administration has never been able to satisfy the demand for citrus plots. With the aim of spreading the benefits of the scheme as widely and evenly

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1 The standing of the Administration was at this time very low indeed, and considerable numbers of people were convinced that the intent of the scheme was malicious.

2 Harvey, 'Report...' 105.

3 'Cook Islands Amendment Act' 1946 section 50.

as possible the size of plots was standardized at one acre (containing ninety trees) on Rarotonga and half an acre (containing forty-five trees) on the other islands.[1] By March 1960 a total of 724 plots had been established under the scheme, although[2] their total area was only 450 acres. As shown in table 5,[3] fruit exports from the scheme now constitute by far the largest item of agricultural exports from the group in terms of both volume and value, and in 1957, 1958 and 1959 produced 45 per cent, 51 per cent and 49 per cent respectively of the total income from agriculture in the group.[4] As the trees are still young and have not yet reached the period of maximum bearing, output is increasing steadily each year, whereas output of other primary produce has been static or declining.[5]

The 450 acres under the scheme are now producing fruit of an export value of the order of £345 per acre per

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1 Such an area, it was considered, would be well within the capacity of the individual farmer to manage without interfering with his subsistence cultivation or with small-scale cash cropping and would bring in a cash income which would constitute a significant improvement on the standards of that day.

2 Details of the plots and their distribution as at 31.3.1960 were as follows:

Rarotonga	(average 90 tree plots)	242 plots	204 acres
Aitutaki	" 45 " "	202 "	106 "
Atiu	" 45 " "	165 "	77 "
Mauke	" 45 " "	115 "	63 "
	Total	724 plots	450 acres

(Source: NZPP A3 1960:26.)

3 See page 261.

4 Output from Mangaia (which was excluded from the scheme owing to its refusal to permit investigation by the Court of title to land on the island) has been deducted from the total exports in deriving these percentages. On the other islands there are still small quantities of citrus produced from outside the scheme, but it is estimated that they account for less than eight per cent of the total. They are nevertheless processed and marketed through the scheme.

5 Department of Agriculture estimates indicate that average output of citrus for 1957-9 should be doubled by 1967-9 from the present plots alone.

annum,[1] and it is expected that the income per acre will have doubled within a decade. Apart from the land under this scheme, all other land in the group in the same year brought in an average return of £2.9.3 per acre. Excluding the atolls of the Northern Group, the soils of which are classed as suitable for tree crops only, and the problem soils, and assuming that productivity in the Southern Group comes from the first class lands only, the income per acre averages only £14.13.7 per annum. If we again eliminate an area of 2,800 acres of first class land for subsistence needs the figure rises to £20.15.10 - still only six per cent of the income per acre of land under the scheme.[2] This latter figure assumes production from the 9,523 acres of first class soil only, and ignores the 16,453 acres of land classed as suitable for tree crops as well as the 21,005 acres of problem soils.

The significant differences between productivity on the 'scheme' lands and other areas appear to be firstly the availability of low cost long-term credit, secondly the introduction of managerial and technical skills, thirdly the organization of processing and marketing facilities, and fourthly, but very significantly, a system of land tenure which is acceptable to all parties and gives security of title to the grower as well as security of investment to the lending institution, and without which the

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[1] I.e. for the year 1959 (the latest year for which figures are available). Amounts quoted in this paragraph are for the f.o.b. value of the fruit shipped, of which the net payment to the grower would be slightly more than half.

[2] No allowance has been made for villages, roads or cemeteries, as these are not generally found on the first class lands.

whole innovation could not have been successfully introduced.[1]

Later experiments

Since the introduction of the Occupation Rights scheme several other experiments have been tried on a smaller scale. The first of these concerns the island of Nassau, which had since the last century been in the hands of a foreign commercial firm. In 1945 it was purchased by the New Zealand government on behalf of the people of Pukapuka for £2,000 and in 1952, after repayment of the purchase price by the Pukapukans, the island was vested in the people of that island, to be held 'in accordance with their Native customs...'.[2] The Pukapukan people chose to work the island collectively and to settle approximately one hundred of their number there each year to exploit the copra. The 'settlers', who are changed approximately annually, are drawn from representative families.

Claims by Atiuans to rights in the uninhabited island of Takutea were so numerous and complex that the Land Court eventually awarded the island to the people of Atiu as a whole. An elected committee was formed to administer

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1 The only crop which has been grown successfully on a large scale in recent years without the provision of organized credit and technical skills is the tomato. This crop takes only about six months from planting to final harvesting and is thus well suited to the present tenure situation, for it does not commit the use of the land to any one person for long periods and, as it does not require a high input of capital or technical skill, it is able to be effectively stimulated by local entrepreneurial activity. Nevertheless, the relative efficiency of tomato cultivation is considerably lower than that of citrus cultivation, and the annual income per acre of the crop has in recent years been less than one quarter of that from citrus (there being approximately 800 acres planted in tomatoes annually according to official estimates). - See table 5 page 261.

2 'Cook Islands Amendment Act' 1955 section 7. The people of Pukapuka paid the £2,000 purchase price by deductions from copra exports. Ten acres of land was reserved by the Crown for public purposes.

Takutea, and since 1955 work parties have been sent from Atiu to cut the island's copra approximately once annually. The workers are paid for their labour and the balance of the income is deposited in a fund administered by the committee for expenditure for the benefit of the entire population.

Both Nassau and Takutea have produced much more copra per acre than has been derived from those coconut-bearing lands in the group which have been exploited on an individual or family basis. Nassau produced an average of 0.114 tons per acre during the five-year period 1955-9, and Takutea 0.059 tons. In terms of man-hours, however, the latter island was the more productive as it has only been worked for a few weeks each year. Neither island could be said to be being exploited to the optimum, and scientific management could probably increase the yield of the former island threefold and the latter fivefold or more. Nevertheless, the present output per acre of these islands is considerably higher than the average of 0.036 tons from islands where ownership and production is on an individual or family basis without central organization.[1]

A reafforestation project was begun on Atiu in 1951 with the dual aim of growing fruit-case timber for the export trade,[2] and of rehabilitating fern lands which were badly leached and eroded.[3] Any person wishing to join the

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1 Production from the island of Manuae, which has been run as a commercial plantation by a European company, averaged 0.210 tons per acre during the same period: about six times the group average. Admittedly fewer coconuts are used as food on Manuae than on most other islands, but even making allowance for this difference, the production per acre from Manuae is still markedly greater.

2 Fruit cases are at present imported in shook from New Zealand, and cost approximately £32,000 per annum. A similar project was begun on Mangaia in 1959.

3 For fuller details of the scheme see Jolliffe, 'Forestry and the Cook Islands'.

scheme had to be an owner of the land on which he proposed to plant, and was supposed to have obtained the consent of his co-parceners (though no evidence of such consent was required). The planter was required to clear the plot, but discing before planting was done by government-owned tractors. Seedlings were provided from a government nursery, but the digging of holes, staking and planting were the responsibility of the planter though he was instructed and assisted in the setting out by a member of the nursery staff. The planter was required to keep a clear fire-break around the plot. The scheme is a continuing one, with approximately twenty acres being planted annually. As the trees take only about fifteen years to mature, and as cutting will proceed at the same rate as planting, a total of approximately three hundred acres will be taken up by forestry at any one time.[1]

No written agreement is made between the planter and his co-parceners, nor between the planter and the government. Nor is any security taken and, though the government intends to recoup its net costs from the income from sales of timber, no accounts are issued to growers. No special tenure provisions have been made to accommodate the scheme,[2] nor any definite proposals for the distribution of income. The risk taken may well be merited as government outlay is small,[3] and the lack of legal requirements has kept overheads to a minimum. The scheme is, in any case, still in the experimental stages. Moreover, in the event of dispute between co-parceners, it is understood that the Land Court

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1 In conjunction with the scheme of similar size on Mangaia it is assumed that all the group's requirements of fruit cases will thus be met.

2 Though the provisions of part 4 of the 'Cook Islands Amendment Act' 1946 would be appropriate to it.

3 Jolliffe quoted the figure of £9.5.6 per acre in 1953. - 'Forestry...' 7.

would support the planter, but as this is not provided at law there is no assurance that this practice will continue. Even if it did, there is no indication of what view the Appellate Court might take on appeal. As a number of residents of Rarotonga who have legal rights to land in Atiu have stated that they expected a share of the proceeds from forestry plots planted by their co-parceners, the issue is of more than academic interest.

A royalty of three pence per cubic foot would give the grower an estimated £87.10.0 per acre, and six pence per foot would give £175.0.0 per acre, but as yet no definite figure has been agreed on. In addition to the royalty, of course, an even larger amount will be paid out for cutting, milling and transport. While income per acre from forestry will not be comparable with that from citrus or tomatoes, it must be remembered that the latter are grown on first class land and the former on 'problem soils' which have to date produced virtually nothing.

In February 1961 a co-operative society in Rarotonga purchased the lease, stock and equipment of the island of Manuae,[1] which had since last century been operated as a copra plantation by various European interests, its entire population being indentured from other islands for this work. The co-operative intends continuing commercial exploitation on plantation lines but is considering the possibility of establishing a permanent settlement there at a later stage.

The most recent experiment concerns the development of fern lands at Mauke. In March 1961 all those persons (numbering many hundreds) on the island who had rights in portions of land within a 450 acre contiguous block,

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1 Cook Islands News 1.3.1961.

voluntarily put those lands under the care of their Island Council for development with government assistance for a trial period of five years.[1] Tractors and other mechanical equipment have been loaned by the Administration for the initial breaking in of the land, and preparations have been made for the planting of a peanut crop this year. Other crops, and the possibility of livestock farming, are also contemplated.

The soils of this whole area are classed as 'problem soils' and have not previously been utilized to any significant extent. Therefore, as much of the initial emphasis will be on developing the soils themselves with fertilizers, cover crops and other techniques, as on producing economic crops. The plan proposes to develop and farm the whole block initially as a single management unit, but in the event of continuation beyond the five-year trial period plans will have to be evolved for the tenure of the land and the continued organization of the project.

All these experiments have several features in common. Firstly, they are associated with tenure forms which give adequate security to the land-working unit; secondly, the cultivation, planting and harvesting is centrally organized (though not necessarily executed by the organizing institution), and thirdly, in so far as credit and equipment are used, they are supplied by a single agency. It is as yet too early to predict the results of the last two experiments, but all the others have been associated with considerably higher output per acre than is in fact derived from land of equivalent types which has been exploited on an individual basis.

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[1] Details of this project were kindly supplied by its author, Mr A.O. Dare, Resident Commissioner of the Cook Islands.

New patterns of work organization

In addition to the changes in work organization which are consequent upon the above legal or informal modifications to the basic tenure pattern, there have also been changes on those lands which are worked under the 'freehold' system of tenure. Some of these changes have also been due to problems created by the existing tenure situation.

The first change concerns what may be loosely termed entrepreneurial share farming, which is organized by a small group of Maori farmers who are sufficiently enterprising to overcome the obstacles inherent in the tenure situation. Each of these men operates tractors and other mechanical equipment, owns a trade store and transport facilities, and is able, through the supply of credit, machinery and management skills which are otherwise lacking, to make productive land which in all probability would not otherwise be utilized. Using labour which is otherwise underemployed they plant tomatoes and other short-term cash crops on lands which are idle owing to the absence of owners, disputes among co-parceners, or the inability of owners to use them. When the crop is marketed the entrepreneur gives a (usually unspecified) share of the proceeds to the most influential members of the owning group.

Most of the entrepreneurs concerned are not themselves large landowners, and all of them use principally land in which they do not have rights. If they could get more land, they claim, they would willingly exploit it. In the present situation their role is an important one and their contribution to output is considerable, for, from data examined in Rarotonga, it is estimated that the twelve largest of them are responsible for organizing the bulk of the island's tomato exports. While there are similar men on the smaller islands, they are nowhere so active as on Rarotonga.

The reduction in the size of the productive unit, which today is normally the nuclear family, resulted in part at least from changes in tenure. The role of chiefs in the organization of production is now negligible on islands other than Mangaia. It should be noted, however, that in earlier years the largest productive unit was normally the minor lineage, the head of that unit organizing the cropping and receiving payment for the product. While major lineage and tribal chiefs required their followers to plant specific crops at particular times and sometimes monopolized the marketing of the product, planting, harvesting and payment was normally a matter for the component minor lineages. The organizational role today has been taken over by the Administration in the case of citrus, the local entrepreneurs in the case of the larger quantities of tomatoes, the Island Councils to a small extent on islands like Atiu,[1] and in recent years on some islands by producers' co-operative societies.[2] Reduction of the productive unit from the minor lineage to the nuclear family was facilitated by the issue of land titles, by the establishment of savings bank facilities in 1912 (enabling savings to be kept individually), and by the setting up of government sponsored marketing organizations which have been widely patronized and have dealt with members on an individual basis.[3]

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1 Most Island Councils have the power to enforce planting, but Atiu is one of the few islands where this power is exercised. See 'The Planting and Cultivation of Lands Ordinance' 1914 (for Mauke) and equivalent ordinances of the same year for Mangaia, of 1917 for Rarotonga and Aitutaki and of 1948 for Atiu.

2 These have been very successfully promoted, with government assistance since 1955. Co-operative organization of copra production, processing and marketing on Atiu, Mauke and Mitiaro during the last three years has resulted in significant increases in output in comparison with those obtained by individual work organization, but the levels of output reached are not as high as those on the 'capitalistic' plantation at Manuae, the Nassau 'collective' or the Takutea co-operative.

3 The first of these was the Rarotonga Fruit Company which was formed in 1919.

Paradoxically, however, the operation of the Court has forced a situation of increasing disparity between the land-working and the landholding units. For whereas in the pre-Court situation the residential core of the owning group was in fact the land-working group (and held superior rights to those of non-residents), Court action has resulted in a rapid expansion in numbers of 'owners' while the land-working unit has steadily diminished in size. It is therefore not surprising that output from individually worked 'freehold' land is lower, per acre and per capita, than from any of the forms of large-scale landholding and/or land-working which have been outlined in this chapter.

Chapter 15

FUTURE POSSIBILITIES

The demographic context

The population of the Cook group as at 31.3.1960 was 18,041. According to recent population projections it will reach 22,700 in 1966, 26,750 in 1971 and 31,650 in 1976.[1] Assuming that the group contains a total area of 9,000 acres of available agricultural land and a further 20,000 acres of land suitable for tree crops but not for agriculture,[2] there will by 1976 be a crude average of just under one acre of land per head which is potentially productive with existing techniques, less than a third of an acre per head of which will be suitable for agriculture. The decline in per capita real income from primary production over the past half century can be expected to continue unless a higher percentage of the work force is employed outside agriculture, the surplus population is resettled outside the group, or increased productivity per acre is attained from existing land (and waters).

The first alternative lies outside the scope of this study, but it is of interest to note that the percentage

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1 The above projections were kindly supplied by Dr Norma McArthur on the basis of census data up to 1956. Dr McArthur points out that in view of the markedly reduced infant mortality rates and the improved life expectancy since 1956, the above figures are to that extent underestimated; on the other hand, they make only nominal allowance for emigration and are to that extent overestimated.

2 Based on data in Fox and Grange, Soils..., but making allowance for lands already occupied by villages and public utilities.

of adult males employed outside agriculture (or fisheries) has risen from an estimated two per cent at the beginning of the century to thirty-two per cent in 1956.[1] The proportion continues to increase, largely as a result of increases in central and local government services, but also through expansion in industry and commerce.

The second alternative is already taking place at a fast rate, since net emigration from the Cook Islands over the five-year period 1955-9 inclusive averaged 204 persons per year,[2] and additional shipping facilities since mid-1960 have resulted in a five-fold increase in the rate of departure. Assuming the continuing differential between Cook Islands and mainland levels of income and social services and the continuing availability of transport facilities, there is every indication of migration continuing at a high level.[3] In addition to this migration away from the group as a whole, there is also migration away from the island on which people hold their land rights and, among those who remain on their home islands, away from primary production into government employment and other tertiary services.

In addition to the more direct consequences of migration, the ever-present alternative thus offered to the Cook Islander has had the effect of causing him to aspire to the levels of income and social services obtaining in

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1 Based on census of the Cook Islands 1956. Many of these persons are nevertheless partially dependent on agriculture for supplementary subsistence or cash cropping, but even if they were excluded in determining per capita income from agriculture, a marked decline is still apparent. By adult males is meant males sixteen years of age and over, but excluding those still attending school.

2 Being the net emigration of Cook Islanders only - based on NZPP A3 1955-9.

3 Cook Islanders are British subjects and New Zealand citizens, thus their entry into New Zealand is not restricted. In June 1961 an officially sponsored plan for further migration to the mainland was announced.

New Zealand, not those found in other Pacific territories, nor those related to the local economic potential. This results in increased demands and expectations, even though the physical resources within the group remain the same.

Even if employment opportunities increase and migration rates continue at their present level, the per capita income of the man on the land will not be automatically improved, and attention must be directed to the third alternative, that of increasing the productivity of the land per acre. While it has been shown that tenure changes cannot of themselves be expected to result in major increases in output, it has also been indicated that the existing 'freehold' system actually inhibits maximum productivity and that schemes for agricultural development must be preceded by or associated with modifications to the tenure system. It is with these modifications that this chapter is concerned.

Advantages of the existing system

Before considering possible modifications to the present tenure system, note should be taken of its desirable features, for the emphasis thus far has been on its weaknesses rather than its strengths. The first of these is the existence of a functional system of determining boundaries in the event of dispute. Boundary disputes were a common cause of stress in the indigenous tenure system,[1] and these have been effectively overcome by Court action. Boundary surveys in the Cook Islands have been executed with absolute precision, and are far superior to those in both Samoa and Tonga.

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[1] This is shown by the frequent settlement of boundary claims in early Court records, the appreciation expressed by Atiuans at this aspect of the Court's work in its recent sittings there, and the continued existence of boundary disputes on at least some of the islands where the Court has not sat.

The second is the existence of an independent body to determine ownership in the event of dispute. This, too, was a widespread problem before the Court was established and remains a serious difficulty in Manihiki, Rakahanga and Penrhyn where most of the lands are as yet uninvestigated by any competent tribunal. However, while the integrity of the Court is nowhere doubted, the degree to which it has achieved the objects of the legislation in determining ownership is at times open to question.[1]

Thirdly, access to the Court is facilitated by the fact that costs charged to the parties are kept to a minimum.[2] The Court does not allow legal advocates in routine cases and this has helped to keep costs down as well as to reduce the extent of litigation.[3] Maori opinion was found to favour this practice.

The fourth advantage of the existing system is the presence of registration and recording facilities which are safe, accurate and efficient. Agreements and decisions are verifiable and no longer dependent on memory. In view of the complexity of the tenure system and the multiplicity of ownership this is a considerable achievement, though for these same reasons the cost of maintaing the facilities

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1 As discussed in chapters 12 and 13.

2 Except during the first few years of its operation, the Court has not attempted to recoup its costs from fees. Investigations of title, appeals and rehearings do not usually cost the parties more than £2 per section of land for Court fees. Survey charges, which vary with the nature of the section, are frequently more expensive.

3 A person may be assisted by an agent only with the consent of the Court in each particular case, and that consent may at any time be withdrawn - Order in Council 1902 clause 15 and 'Cook Islands Act' 1915 section 387. Some prominent Maoris and a few Europeans have appeared as agents in particular appeal cases, but none has done so as a means of livelihood. It is rare indeed for agents to appear in investigations to title, successions, or other cases.

is necessarily high relative to the area and value of the land registered.[1]

Any modifications to the tenure system should not be such as to do away with these useful features - an efficient system of boundary definition, an independent and accessible body to determine rights in the event of dispute, and an accurate and efficient system of registration and recording.

Future possibilities: the range of feasibility

In exploring possible approaches to the resolution of existing land tenure problems in the Cook Islands it is necessary to be aware of the limits within which change is feasible. The Cook Islands are a partially autonomous section of the Dominion of New Zealand, for while they are contained within the boundaries of that country and subject to its government, certain powers have been delegated to the local Legislative Assembly.[2] This degree of autonomy does not include control over land laws, and all legislation affecting land tenure must be passed by the Parliament of New Zealand. The Dominion government has,

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1 Owing to the multiplicity of functions performed by the Justice Department it is impossible to isolate the respective proportions of expenditure on land registration and other work (such as registration of vital statistics, criminal court proceedings, deeds, etc.). The total area of land registered or under investigation does not exceed 31,000 acres, but the cost of government dealings with this land (including investigation of title, registration, succession and other matters) is probably in the region of £4,000 to £5,000 per year - a high proportion of the total per acre output of registered land in the group.

2 Known as the Legislative Council until 1957. The Legislative Assembly consists of twenty-six members, fourteen of whom are elected by popular vote by the people of the various islands, seven by Island Councils (local bodies of which all ariki and the Resident Agent of the island concerned are ex officio members, but all of which have a popularly elected majority), and one by Europeans resident in the group, while four are officials nominated by the Resident Commissioner. The Resident Commissioner himself acts as President of the Assembly.

nevertheless, given an assurance that it will not pass legislation affecting land in the Cook Islands without the approval of the local legislature.[1]

Since 1955 land tenure has been a perennial topic for debate by the local legislature, discussion being centred either on government proposals for the sale of house-sites and sale of interests among co-parceners, or on complaints by members about the Court's failure to observe custom. The legislature has consistently resisted any proposals for individualization of land, sale of land rights or other radical modifications to the tenure system.

In the current political situation in the Cook Islands compulsive legislative or administrative action would almost certainly engender public resentment without improving output. Likewise the taxing of land, which has been mooted from time to time since 1894, would in all probability be violently opposed. While such a proposal has decided merits, action on these lines must be set aside for as long as the present attitude prevails.

A further point which must be kept in mind is the vulnerability of primary production in the Cook Islands to violent fluctuations due to hurricanes, plant disease, overseas market changes and other factors, for, being so heavily dependent on produce exports, consumption levels are closely correlated with their volume and value. This necessitates either guaranteed prices and alternative sources of income (from reserve funds or employment) or a surplus of land for each farmer on which to grow extra subsistence crops during lean years and to produce short-

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[1] LEGCO 1957:492. Though the New Zealand government has never expressed any opinion as to the types of reforms it would be prepared to consider, it is improbable that it would oppose any proposals on land tenure which the local legislature is likely to make.

term cash crops if his tree crops are damaged or the market for their product collapses.

Important considerations in any agrarian reform programme are the motivations, aspirations and behaviour patterns of the persons involved, but little is known in this connection in respect of the people of the Cook Islands. What is clear, however, is that the agrarian policies of the past half century which have to a considerable extent assumed that Cook Islanders possessed a similar pattern of values to those of New Zealand farmers or European peasants, have been accompanied in fact by a constant decrease in output. The aim of the Administration was to give 'each man his own land and make him independent of everything but the law...,'[1] but there is no evidence to indicate that the people have aspired to peasant proprietorship or to production on an individual basis, or that the degree of them which has been imposed has caused any advance in their welfare.

The low income and status of farm labour and, particularly on Rarotonga, the lack of available labour in those families which have available land, has led to a high degree of mechanization where credit is available. The cultivation of more than ninety per cent of Rarotonga's agricultural exports is handled by machine and this trend is spreading rapidly throughout the smaller islands. Any tenure changes will therefore need to be in harmony with this new mode of cultivation.

The above considerations impose marked limitations on the types of reform which are likely to be acceptable to the people, but there are nevertheless sufficient possibilities within the limits outlined to enable significant

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[1] MB 4:21A NLC.

improvements to be made in the existing situation. The proposals which follow fall into three groups: firstly, those which aim at resolving, within the present 'freehold' framework, the problems of fragmentation of title and inflexibility of transfer of land rights; secondly, those relating to the constitution of the Court itself and its role in those islands where it has not yet operated; and thirdly, proposals concerning new forms of landholding which may, in particular circumstances, prove more productive of both economic and social welfare than the existing forms.

Fragmentation of title

The problem of title fragmentation is caused by the current Court practice in relation to succession.[1] If the present system continues, every person on each island will, in time, become an owner in every portion of land on that island, and in fact in all the Cook Islands. While it is most unlikely that the present trend will be permitted to reach such lengths, many ownership groups are already so large as to impede the use of the land.[2] To enable the use of land by units which are excessively large, an informal micro-system has evolved within the legal framework and the degree of efficiency with which the land tenure system now operates is due as much to the micro-system as to the legal framework itself.

The micro-system operates on the basic principles of Maori custom, i.e. that primary members of the owning group occupy and have general control over the land, while those who marry out or leave the locality are excluded from benefitting from rights in the land during their absence.[3]

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1 See chapter 12.

2 See pages 244-6, 298 and 341.

3 Not infrequently the Court and survey fees are paid by the occupying branch of the owning group, and they are then considered (informally) to have priority in the use of the land.

It is only when some member of the group ignores this system and insists on adherence to his legal rights that difficulties arise.[1] When this occurs it is almost invariably associated with leases or other negotiations with the land or with domestic disputes over other issues. All those persons listed by the Court as owners are legally entitled to a voice in the negotiations and a share of the proceeds from rents proportionate to their legally defined shares in the land; and the primary members are often a minority.[2]

The most obvious approach to the solution of this problem lies in the reactivation of the appropriate indigenous customs of selectivity in succession. The first of these is the will or reo iku, which allowed a person some element of choice as to who, within his extended family, should inherit his land rights. He did not have the right to will land outside his extended family without their approval, nor was he able to will all his rights to one person and make no provision for others who were in need. It is not uncommon in societies which do not possess modern social security systems for the aged to have the power to give certain land rights to those who have cared for them in their declining years, and many old people in the islands complained that the aged were better cared for when they had some say over the disposition of their land rights.

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1 While this was found to be just emerging on Atiu (as discussed on page 245) it was not uncommon on Rarotonga, and the possibility of it was often given as a reason for not using available land.

2 Some judges of the Court have stated that in negotiations with land they will ignore the views of owners who are resident in New Zealand unless there are special extenuating circumstances - e.g. Judge Morgan, LEGCO 1957:531. However, as the matter is not controlled by legislation, different judges could adopt different practice in this connection.

As under custom, safeguards and limitations would be necessary to avoid other heirs being left in distress.

The second appropriate criterion of selectivity is the native custom whereby, excepting under abnormal circumstances, only primary members of the descent group inherited land rights. As it is most unlikely that distant secondary right-holders who are at present included in land titles would be prepared to have their names deleted, the problem could be overcome by leaving owners as at present, but providing limiting legislation to control succession to their interests, and, as under Maori custom, granting succession only to the children of primary members of the owning group - excepting in the event of there being no primary heirs, or under other exceptional circumstances. The Maori people have been almost unanimous in their wish to retain the proprietary rights of contingent members of the right-holding group, and this would be achieved by the provisions outlined above.

Secondary right-holders would not be granted succession as of right, but provision could be made whereby the primary right-holders could admit any secondary member if they chose to do so. As under custom, it would be a matter for the primary right-holders to determine.

An alternative way in which to achieve a similar end would be to require any person claiming succession to declare whether he or she wished to inherit in the father's or the mother's land. Having once opted for the one side, that person would no longer be eligible to claim succession as of right in the lands of the other parent, except when there were no other heirs living on the island concerned.[1]

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[1] Another means of achieving a similar result (and which is in accordance with custom) would be to determine at birth whether a particular child was to inherit from its father

Nevertheless, provision could be made so that the family of the other parent could, if the majority of right-holders in that land wished, make provision for any such person by means of occupation rights in particular portions of land.

This approach would halt the further fragmentation of titles but would not affect titles which were already seriously fragmented. This latter defect could be overcome, to some extent at least, by voluntary consolidation through exchange of interests.[1] Legislative provision for exchange of interests, and for payment to equalize exchange, already exists, but is very little used.[2] Consolidation by exchange is very time-consuming and it is unlikely that people would take advantage of such legislation unless an extension officer were appointed specifically to advise people of its existence and potential benefits, and how best to ensure that these were obtained in each particular case.[3] The desired result would probably be facilitated if Court fees for these services were waived.

Under Maori custom absentees (other than persons absent for short periods) retained contingent rights in the descent groups from which they originated. Their proprietary

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1 (continued from previous page)
or from its mother. In Fiji, for example, it is necessary when registering the child to declare in which family it will inherit its land rights. Such a system in the Cook Islands would probably require provision for the child to change its affiliation by inter-family agreement at any later stage.

1 By consolidation is meant the process of the exchanging of rights by co-parceners in blocks in which they hold interests in common - i.e. a consolidation of titles. Consolidation of land by exchange of plots among unrelated persons would almost certainly be unacceptable to the people.

2 'Cook Islands Act' 1915 sections 438-44.

3 Such an appointment would be temporary only, ceasing when the necessary consolidations had been effected. Consolidation and exchange are of course of little value unless prior legislation is passed to prevent further fragmentation. - Hunn, Report on Department of Maori Affairs 55.

right was recognized but while they were absent they did not benefit from the use of the land, nor could they participate in its administration. This is still generally the case today, and the Land Court has to some extent supported the practice. However, it is likely that the practice will sooner or later be challenged by some absentee, for it is not supported by legislation.

Some territories which face problems of land shortage similar to those found in the Cook Islands have imposed limitations on the rights of absentees, while others have gone further by annulling the rights of any person absent for more than a specified period.[1] Such a course of action has been proposed in the Cook Islands and has been violently opposed - not only by absentees themselves but even more vehemently by those remaining on the islands concerned, who would benefit most from the annulment of absentee rights.[2] Nevertheless, it would not be contrary to custom to provide legislation whereby absentees, while still enjoying proprietary rights in the land, could not have any say in its administration during their absence.[3]

This would facilitate the day to day use of land and would obviate the current difficulties associated with leasing, which at present requires the concurrence and signature of all registered owners. This may be illustrated by a recent instance wherein, to negotiate a lease for a plot of land at Mauke, it was necessary for the intending

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1 In the Gilbert and Ellice Islands, for example, if a person is absent from an island for more than seven consecutive years, he forfeits his land rights there.

2 In other words the people value the common bonds of relationship and obligation established through the land more than they value its exclusive proprietorship.

3 Absence would need to be defined in both spatial and temporal terms. In view of the widespread use of motor vehicles on Rarotonga today, it is not uncommon for persons living in the township of Avarua (and elsewhere) to use land in another district. For this reason it would be advisable to class as absentees only those persons who were absent from the island concerned.

lessee to contact the 99 'owners', 35 of whom lived in Mauke, 31 in Rarotonga, 21 in New Zealand, 2 in Aitutaki, 2 in Mangaia, 2 in Manihiki, 1 in Atiu, 1 in Mitiaro, 1 in Palmerston, 1 in Samoa, 1 in Tahiti and 1 aboard a ship.

When it is considered that most persons can only qualify for a loan under the recently introduced Housing Development Scheme by obtaining a lease from their co-parceners, and that a high proportion of islanders live on islands other than their own and can only obtain title to land on their islands of residence by lease, it will be appreciated that any step taken to facilitate the process of leasing and to reduce the cost of negotiating leases will be a beneficial one.

Though compulsory abandonment of rights by absentees is likely to be strongly opposed, it would be in accordance with custom to allow persons who intended leaving for a long period, or permanently, either voluntarily to relinquish their rights to their co-parceners, or to give them to particular members of their extended families.[1] Whether or not the sale of rights by absentees would be acceptable is questionable.

Facilitating transfer

While the reintroduction of particular indigenous customs in relation to land tenure can ameliorate certain problems, there are some features in the existing situation which have come about as a result of culture change and for which no adequate custom exists. Perhaps the most serious of these is due to the extent of population movement

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[1] Such a provision would not need to apply exclusively to absentees, as there may be some residents who have secure incomes from commerce or employment who may be prepared to relinquish their rights in certain of their lands to relatives who are dependent on those lands for their livelihood.

which results in many people residing on islands where they have no land rights at all.

The migration is motivated largely by economic considerations and inevitably flows towards those islands and localities where employment opportunities are most favourable. Such skilled personnel as medical practitioners, motor mechanics, equipment operators and school teachers often find it necessary to leave their home islands in order to find work. For those whose stay is long or permanent, finding land which they can acquire on any secure tenure is in many cases virtually impossible. Residing by permissive occupation is widespread and, due to its insecurity, the houses erected on land held under this tenure are of the poorest type.

Not only immigrants are in need of improved facilities for transfer of rights, for many resident families have outgrown their land resources. There are, in fact, many owners who cannot acquire residential or planting sites on their 'own' lands and are forced to join the squatters on the lands of others. While this problem is particularly acute in the Avarua and Titikaveka districts of Rarotonga, several instances of it were noted in Atiu and others are believed to exist in Aitutaki.

This state of affairs necessitates the provision of further facilities for the transfer of rights from persons who are not actively exercising them to those who desperately need them for housing, subsistence cropping and commercial agriculture. As a first step, the government proposed in 1957 that legislation be introduced to permit the sale of house-sites. Limitations were provided to ensure that this would not lead to the wholesale alienation of the land: no person could purchase more than one site on any island, and then only for the purpose of

erecting a house for his own occupation. The Court was to be required, before approving any sale, to ensure that the vendor still had adequate land for the support of himself and his family.

The island people, however, viewed the proposals with grave suspicion. It was noticed that the draft provided for sales to any permanent resident of the Cook Islands, and while the total number of permanent residents other than those of indigenous stock did not exceed twenty, the people feared that a way might thus be opened for an influx from New Zealand or elsewhere.[1] The examples of Tahiti, Fiji and New Zealand were constantly referred to in discussion, as the Cook Islanders are well aware that in all three places the best land is no longer in indigenous hands. They feared also that this might be the 'thin edge of the wedge' and that once this step had been approved further provisions for land sales would be made without their consent.[2] The matter was consequently deferred until 1959 when it was again opposed.[3] Quite apart from the question of sale, however, there may be sufficient alternative possibilities acceptable to the island people to alleviate the acute rigidity in the current situation.

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1 This view persisted despite the fact that as soon as the matter was raised the Administration 'closed the gap' by amending the proposal to apply to Cook Islanders only.

2 For fuller details see LEGCO 1957:216-9, 486-540, 551-63, 679-91.

3 Rarotongan members of the Assembly called a public meeting (which I attended) to gauge public opinion on the issue. Over three hundred attended but only four persons (all of them public servants) voted in favour of the proposals, the balance being vehemently opposed. Most of the speakers were convinced that the government had some ulterior motive in promoting the legislation and that it would open the way for wholesale alienation. This was also the dominant theme in the opinions of members of the public with whom the matter was discussed.

The most useful provision at present in existence is the lease, but owing to multiplicity of ownership, the negotiation of leases has become so costly and time-consuming as to be impracticable in the great majority of cases. No doubt more land would become available for leasing if the problem of fragmentation could be overcome.

In discussion with landowners, two serious objections to leasing were frequently raised. In the first place, owing to the constant depreciation of the value of money, rentals which were adequate enough at the time of leasing proved to be almost nominal within a few years. Instances were quoted of lands which were leased to Europeans early in the century at less than two shillings per acre, and which are still held by Europeans at these rates.[1] It is true that the Land Court has in recent years insisted on all leases containing provision for rent revision, usually at twenty year intervals, but even this appears to be inadequate, for the buying value of money has depreciated to less than half during the past two decades.[2] This problem could be overcome by making provision for more regular rent revision - perhaps at five-yearly intervals[3] - and for relating revisions to changes in the buying power of money in the interim period. In addition, consideration might be given to enacting legislation to permit the revision of rentals on existing leases.

The second objection to leases was due to alleged speculation by lessees. Leases are invariably granted as

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1 The instances quoted were verified by reference to Land Court records.

2 According to the latest New Zealand retail price index the relative values for 1939 and 1959 were 523 and 1146 respectively. - See appendix C.

3 Such provision exists in the Kingdom of Tonga where all rentals on leases are subject to revision at five-yearly intervals.

a result of a personal request being made to the landowners, and most lessors therefore consider that in making land available, they have granted a favour to someone in need. It is commonly held that Europeans who acquire leases often use them for only a few years and then sell them at exorbitant profits to other Europeans. The resale value of the lease is indicative of the market value of the land, and the lessors feel not only that they have been cheated, but that the sale of the lease to an outsider of whom they do not approve is a breach of faith. Irrespective of the exaggerated nature of many cases quoted by informants, the belief is widespread, and there are sufficient instances of transfer at high profit to perpetuate the belief that it exists on a wider scale.[1] This problem could perhaps be ameliorated by inserting a clause to the effect that leases could not be sold without the approval of the owners, who should have the option of resuming the land subject only to payment for improvements effected.[2] Most Cook Islanders have an aversion to speculation in land.

Owing to the cost and inconvenience of arranging leases, there may be some advantage in a simplified system of short-term occupation licences of one year's duration, which would require neither detailed survey, ratification by the Court, nor the approval of absentee owners.[3] Many people have land which they may be prepared to make available for a season, but which they are not prepared to lease. Most

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1 E.g. one case investigated showed that a lease was sold (without any improvements) within six years of being negotiated at sixty-two and a half times the annual rental. It was then resold, within ten years of its original negotiation, at one hundred and twenty-five times the annual rental.

2 It would be necessary for the Court to determine the value of improvements in the event of dispute.

3 Such a system operates in Fiji.

of the food and export crops from the group require less than a year in which to mature and such a provision could lead to the fuller utilization of existing lands. As the surplus land and the people who need it are only likely to be brought into contact to any appreciable extent if a mediating agency exists to do so, some government department or other institution would need to provide such a service.

As discussed in the previous chapter, the existing occupation rights legislation enables any owning group to vest any portion of their land in any person for such time as that person utilizes that land. This legislation was introduced primarily to facilitate the Citrus Replanting Scheme, and has to date been used almost exclusively for that purpose. However, while the legislation itself is not restricted to that scheme, most islanders with whom the matter was discussed in the field believed that it was. It would appear that more publicity to explain the nature and potential uses of the occupation rights legislation would be merited; particularly in relation to the security of tenure it provides to co-parceners for long-term crops.

The present position could be further alleviated if some authority were given the power to purchase surplus land by voluntary negotiation for the purpose of redistribution to those in need of it. Migration and variations in fertility have led to a situation wherein some small families have relatively large tracts of land, and some titleholders are in a similar position. Other lands which could be made available for redistribution are those which have no owners at all, as the legal owners have died without issue and no person has claimed succession by reversion.[1]

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[1] Several such instances were noted in the area where field studies were carried out on Rarotonga, and others are known to exist elsewhere.

Criteria of eligibility and limits on the area available to any one person would need to be laid down. In view of the probable aversion to acquisition by government, it might be preferable to empower Island Councils, co-operative societies, or ad hoc boards to acquire and redistribute land in this way.

The constitution and functions of the Court

The Land Court is required to act in most of its functions in accordance with native custom. However, it has never initiated research to determine the nature of existing custom, nor has it subjected the cases in its own records to analysis to determine the nature and frequency of the processes operating. As a result, its judgements have in a large proportion of cases not been in accordance with custom. Whether for this reason or otherwise there is a considerable and widespread public prejudice against the Court within those islands where it has worked. That much of this prejudice may be ill-informed does not affect the fact of its existence and that, as a consequence, there is almost certain to be opposition to any proposal which in any way increases the discretionary power of the Court as at present constituted.[1]

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[1] I gained the impression that the Land Courts in Western Samoa and Tonga enjoyed much higher public approbation. It was largely as a result of having taken land matters out of native hands that the Gilbert and Ellice Islands Colony found that by 1944 it had 75,000 outstanding land cases awaiting settlement, and the number was increasing at the rate of 700 annually. At that time an administrator with extensive experience in colonial land matters observed that it was 'presumptuous, one might even say absurd, for an [European] officer to set himself up as a greater authority on the customs of an island than an assembly of Elders of that island'. Thereafter, the whole onus of dealing with land matters was returned to indigenous hands and European Commissioners were required not to 'match their knowledge of native custom against that of the elders'.

If a more faithful observance of custom is to be achieved in future, there appear to be two alternative approaches to it. On the one hand, detailed legislation can be drafted specifying the nature of custom and the ways in which it should operate in any given situation.[1] In order to ensure appropriate adaptation to any change of circumstances, it would appear to be desirable that the people themselves be empowered to make such changes as they wish: either through the Legislative Assembly or through local Island Councils.

On the other hand such a result could perhaps be achieved by the appointment of indigenous assessors. The use of assessors in land investigations is general not only elsewhere in the Pacific, but also in other parts of the world where European judges are required to deliberate on matters of native custom.[2]

It might be maintained that if indigenous people were aware of the true nature of custom, then they should have given the Court details of the various customs in the course

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1 Of the various petitions which have been presented since World War II pointing out that native custom was not being followed by the Court, the latest, that to the Minister of Island Territories in 1958, requested that a Royal Commission should determine the nature of custom and lay down rulings on it for the Court to follow.

2 E.g. in Western Samoa the Land and Titles Court is comprised of a President (who is the Chief Judge of the High Court), not less than 2 Samoan Judges, and not less than one assessor; in Tonga, though the need for assessors is minimal due to the comprehensive provisions of the law, the Land Court is comprised of the Chief Judge of the High Court and one Tongan assessor; in Fiji the Native Lands Commission is comprised of a Commissioner (usually a Fijian) and a group of Fijian assessors elected for the particular area by the Provincial Council. In the Solomon Islands native land cases are dealt with by the District Commisoner sitting with two native assessors. In the Gilbert and Ellice Islands Colony the Lands Commission is composed entirely of indigenous members though a European Chief Lands Commissioner sits with them in appeal cases. Land Courts in Africa appear generally to follow the same broad pattern. (The Cook Islands Land Court is composed of one judge - a European - who sits alone.)

of evidence and questioning by the Court. This argument is not valid for the reason that, like most people, though they are aware when a particular act is or is not in conformity with custom, they cannot necessarily enunciate the principles involved.[1] By way of example, it can be shown that despite the fact that the Atiu people did not explicitly state the nature of the customs by which they acquired their rights to lands in Tengatangi, almost every claim to land there followed strictly in accordance with the customs laid down in the foregoing chapters of this study, but despite this tremendous volume of examples of the principles of succession presented to the Court, it was still not aware of their precise nature.[2] The fact that ten successive judges have determined cases continuously for almost sixty years without being aware of the exact nature of the customary principles operating indicates that, for so long as native custom is the basis of land transactions, some better method of enabling the Court to ascertain custom accurately is essential.

To date the Court has investigated title to a little over half the total land area of the Cook Islands, and just under one quarter of the area of New Zealand's inhabited island dependencies.[3] Most of the inhabited islands of the

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1 Nor, of course, can most Europeans or other peoples enunciate the principles involved in the various social institutions in their own societies, despite constant participation in those institutions and a knowledge of how to act in particular situations.

2 See chapter 12.

3 The other inhabited dependencies are Niue Island and the Tokelau group. Niue is approximately 64,900 acres in area and the jurisdiction of the Land Court extends to this island, though very little work has as yet been done there. The Tokelau Islands are a group of three coral atolls whose total land area is estimated at 2,500 acres. Though no statutory body at present has any authority to settle land claims there, it is probable that the jurisdiction of the Land Court will be extended to include those islands as a corollary of a recent decision to administer them from the Cook Islands. The Chatham Islands are not dependencies and are served by the New Zealand Maori Land Court.

Cook group as well as Niue Island and the Tokelaus have repeatedly requested the services of the Court or of some similar institution to assist them in the solution of their existing tenure problems. At the current rate of 800 acres of investigation of title per year, however, it will be many years before all lands in the Cook group are actually dealt with, and even longer before those of Niue and the Tokelau Islands can be considered.[1]

As it is known that the customs of the Southern Group do not obtain in the Northern Group, and that the customs on Niue Island and the Tokelaus are each different again, it would appear to be desirable to precede Court investigations there by research into the nature of the existing customs and such modifications to them as the inhabitants may wish to make. If custom were to be codified, it may be necessary, as it has been found necessary in the Gilbert Islands, to draw up a separate Land Code for each island or group whose customs differ from those of their neighbours.[2]

One point which will merit consideration is that of the unit of ownership. In the Southern Group at least custom considered that proprietary rights lay with named descent groups, and if this situation obtains on the other islands then the people may prefer that the land be registered in the name of the relevant descent groups, specifying the accepted processes of admission to or departure from those groups, and the various usufructuary rights of

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1 In view of the volume of work the Court has in connection with succession, adoption, leases and other matters, and in view of the complexity of the tenure situation, 800 acres is a considerable acreage to cover.

2 Or, as in some territories in Africa, to provide the Court with a manual of custom to guide it in its deliberations. The use of a system of law reports as a basis for decisions would appear to be too cumbersome for such small societies.

component members.[1] If the people desired that proprietary rights should be clearly separated from usufructuary rights, and that the former should be vested in descent groups, usufruct could be both more easily and more flexibly managed by a system of occupation rights or occupation licences issued by the descent group to individuals or groups for specific periods and purposes.

Only two islands have not, through their respective Island Councils, expressly requested the services of the Court. Pukapuka, the first of these, has the most serious population pressure in the group, with 642 people living on 1,250 acres of land, most of which is coral rubble and sand.[2] Living thus, the Pukapukans have evolved a system of collective exploitation of the bulk of their lands, each village working as an owning and producing unit under the direction of its elders.[3] Mangaia, the other island which the Court has not investigated, has strongly and consistently opposed any Court investigation since its inception. As this does not appear to have adversely affected production from that island, in comparison with those islands served by the Court,[4] and as their popularly elected Island Council has never expressed any wish for it, there would

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1 Such a course of action is at present followed in Fiji and in Western Samoa.

2 Aitutaki has a lower acreage of land per capita, but its soil is markedly richer and some alternative employment opportunities exist. Manihiki also has a slightly lower acreage per head, but due to the existence of pearl shell in the lagoon, the Manihikians can afford to import the bulk of their food supplies.

3 Data on the Pukapuka situation has been derived from Beaglehole, Ethnology... and Numa, personal notes.

4 See chapter 14.

appear to be no valid reason for introducing the Court there at this stage.[1]

Incorporation: a possible tenure innovation

In considering new forms of tenure, the present degree of utilization of the land must be born in mind. While almost all the land in the group is used to some degree, whether for planting, gathering of wild fruits or the collection of building materials, only an estimated eight per cent is actively used for housing, public utilities and crops other than the coconut.[2] A further eleven per cent may be said to be planted with 'economic' stands of coconuts,[3] though much of this land could be more fully utilized. The remaining eighty-one per cent of the land is markedly under-utilized: much of it because it is at present regarded as unusable.

Owing to strong individual ties with particular areas of closely settled land (through investment in houses, crops and other improvements, as well as sentimental associations resulting from continued use for subsistence, burial of relatives, access and other purposes) innovation is more likely to be successful if it relates to those lands which are at present little used. Moreover, as the people are not dependent on those lands for their livelihood, they would probably be prepared to experiment with

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1 The merits and defects of the Mangaian tenure system are a matter of considerable controversy, but as yet little factual data on the system exists outside Mangaia. It is expected that the recent researches of Dr D.S. Marshall will provide this knowledge.

2 In the pre-contact era these lands provided medicines, ropes, famine foods, building materials and other supplies, most of which are now obtained from trade stores. There is therefore no longer the necessity for each family to have its own bush lands.

3 I.e. not including areas on which only scattered coconut trees grow or which are not exploited systematically.

them more freely than with closely settled lands. Proposals for new forms of landholding, therefore, are restricted to these undeveloped areas.

The fact that most of these lands have not been commercially exploited since the introduction of a cash economy suggests the desirability of examining the possibility of alternative systems of tenure and work organization. The existence of a potentially productive soil and the dissemination of information on how to make it so has generally been insufficient to stimulate the extensive use of these soils. Since 1950 the Administration has tried to encourage the rejuvenation of the banana industry on Rarotonga[1] on an individual basis, but despite prizes, propaganda and guaranteed markets the output has not reached one per cent of the quantity exported under the system of organization on a minor lineage basis which operated during the period 1906-15.[2]

Despite frequent proposals, no concerted attempt was made to rejuvenate the coffee industry after its collapse at the turn of the century until the necessary organization, credit and technical skill was recently introduced by co-operative societies and agricultural extension services. The replanting of coconut groves is being undertaken almost entirely by the co-operative societies and island councils, and on those islands where neither body has assumed this responsibility the industry remains undeveloped. The major problem now inhibiting the spread of coffee and coconut planting is the lack of security of tenure for the planter. Only those proposals which were associated with adequate tenure forms and the provision of credit and

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1 But not on other islands owing to shipping difficulties.

2 See pages 253 and 261.

technical skills (i.e. the Citrus Replanting Scheme, the afforestation project on Atiu, and the Mauke fern land scheme) have responded with marked increases in productivity and planting. With the exception of citrus, all the above crops - bananas, coffee, coconuts, case timber and peanuts - are grown principally on land which is classed as unsuitable for agriculture.

For several reasons it appears desirable that these areas should be held and worked in relatively large tracts. As most of the lands concerned suffer from some defect: either excessive steepness, the existence of rock outcrops or leached soils, a considerable input of capital will in many cases be necessary to make them fully productive.[1] New techniques of cultivation may be necessary and perhaps new crops. Innovations of this type can best be introduced with centralized management and an institution of sufficient size to operate cultivating and processing equipment and hire skilled staff. Such an institution could not function effectively without secure tenure of the land it was working. Fortunately, the undeveloped areas lend themselves to large-scale exploitation, as the average size of sections in those areas is many times larger than those in settled areas,[2] and as numbers of contiguous sections can be

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[1] Most of the areas nevertheless appear to have a good productive potential given appropriate techniques of cultivation and soil conservation. At present Cook Islanders rarely crop land which lies at more than fourteen degrees of slope, but Dr J.E. Blaut informs me that he has himself measured land with a similar soil cover lying at sixty-three degrees and being actively cropped in Jamaica.

[2] The average section in current use (excluding house-sites) in the four tapere of Turangi ma Nga Mataiapo was just under three acres in area, and the average unused section approximately twenty-eight acres in area. The used sections were generally the more fertile.

developed jointly[1] (whereas in the settled areas the unused sections are scattered and thus not conducive to joint exploitation).

It is certain that the people would not be prepared to sell their rights in undeveloped lands, and while some individuals may be prepared to lease them to an outside person or group, the majority in all probability would not, thus precluding any major development from taking place. To be acceptable to the people, it is likely that any proposed enterprise would need to be so framed that the present owners retained some rights to the land and had a resonable assurance of an income from it. Perhaps the most appropriate tenure form under these circumstances is the 'incorporation'.

Contiguous undeveloped lands in any particular locality could be incorporated into a single block, rights to individual sections being annulled and replaced by shares in the whole corporation in proportion to the separate rights previously held in the area. The land-owning corporation could work the land as a single unit for the benefit of its members, or could lease it to a local co-operative society or other enterprise in which the people had a degree of participation, either at a fixed rental or for a share of the profits.

If the people concerned were not anxious to lose their proprietary right to their particular sections in an untried project, it might be preferable for the owners to merely lease their separate rights to a co-operative society formed for the purpose, again for exploitation for the benefit of the owning group. This alternative, while it may be more

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[1] On several of the Southern Group islands there are a number of contiguous tracts (containing numerous family sections) of over five hundred acres each, which are virtually unused.

readily acceptable in some situations, would involve more cumbersome accounting procedures and should perhaps be regarded as an interim stage preceding full incorporation.

This form of tenure, which has been extensively tried on Maori lands in New Zealand, could facilitate the introduction of capital, managerial skills and modern techniques of production. Used to develop such virtually unused lands as the 620 acre Turangi valley on Rarotonga, the Mauke fern lands or the interior of Mangaia it would be able to employ as part of its labour force persons with inadequate lands of their own.[1] The Turangi valley, for example, could be utilized for large-scale banana production (as it once was) but, as shown on page 265, the resident owners of the land would be unable to supply a sufficient labour force to work the project. All Turangi people would derive income from the project in proportion to their shares of land in the scheme, but such labour as they could not supply could be drawn from the underemployed surplus in Avarua.[2] Being labour intensive, and utilizing land which is at present idle, such a project would help to overcome one of the major agrarian problems in the group - that of integrating a

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1 Many persons employed in the citrus scheme and on Manuae plantation have insufficient land of their own on which to subsist.

2 According to the census of 1956, thirty-six per cent of persons then resident on Rarotonga had been born outside that island, but as the migration to Rarotonga has proceeded constantly for over a century, a large proportion of persons born in Rarotonga still have no land rights there as they were born of parents who came from other islands (in 1895 thirty-four per cent of Rarotonga's population had been born on other islands). In addition there are many Rarotongans whose land rights are so fragmented that they are unable to acquire the use of any portion of their lands. Avarua and Titikaveka are the districts containing the highest proportions of persons without land rights, and while no details of their numbers are available, I would estimate that sixty to seventy per cent of the population of those districts is without the effective use of planting land in which they hold rights.

growing under-employed and landless labour force with the large tracts of land which are not at present in use.

... ...

It might, perhaps, be appropriate to conclude this historical analysis of land tenure in the Cook Islands with the maxim so often laid down by the Food and Agriculture Organization of the United Nations: that unless tenure reform is associated with improvements in technical skills, the provision of credit, transport and markets it is unlikely to result in increases in output or in the satisfaction of the people concerned. Furthermore, in a democratic society, proposals for reform must be evolved with the full participation of the people concerned, and must be accepted by them if they are to result in effective improvements to their social and economic welfare.

A P P E N D I C E S

Appendix A

SCHEDULE OF LAWS AND OTHER PROVISIONS RELATING TO LAND IN THE COOK ISLANDS

This schedule gives a brief summary of all legal enactments, together with major official pronouncements and directives of a semi-legal character, relating to land tenure in the Cook Islands and includes several items not directly concerned with land tenure, but referred to in the thesis.

Brackets following each summary indicate the most convenient archival or other repository where either a full copy or the most complete reference to it will be found. An abbreviation immediately after each title shows by whom the particular enactment was made, the key to the abbreviations being as follows:

CM Made by the chiefs of the island concerned with the guidance of missionaries of the London Missionary Society

IC Made by the Island Council of the island concerned

FP Made by the Federal Parliament of the Cook Islands (1891-1901)

FC Made by the Federal Council of the Cook Islands (1901-12)

Gov Made by the Governor of New Zealand

RC Made by the Resident Commissioner of the Cook Islands (the senior representative of the New Zealand government in the group)

NZP Made by the New Zealand Parliament

OIC Made by New Zealand Order in Council

GG Made by the Governor General of New Zealand (under a New Zealand Act or Order in Council)

LC Made by the Legislative Council of the Cook Islands (1947-57)

LA Made by the Legislative Assembly of the Cook Islands (1958 - present)

A. MISSION PERIOD 1823-88

1827: Laws of Rarotonga - CM. No copy preserved. Based on the Raiatea code, of which a copy is preserved in the Mitchell Library.
(Pitman, Journal 19.9.1827)

1847: E Ture No te Toru Ariki o Aitutaki (Laws of the Three High Chiefs of Aitutaki) - CM. No copy preserved.
(LMS)

1862: The Laws of Rarotonga written by the chiefs and printed at their special request and cost - CM. No copy preserved.
(Gill, AAAS 309)

1874: Laws of Rarotonga - CM. No copy preserved.
(Chalmers to LMS 9.12.1874 SSR)

1879: The Laws of Rarotonga. Made by the Council of Arikis, by Makea, Karika, Tinomana, Pa and Kainuku - CM. As outlined on page 157.
(Resident Commissioner's files, C1A)

The existence of similar laws on the other islands is indicated by numerous references (e.g. Gill, Gems... 208, 237; Gill, Life... 102) but there is no information to show whether or not they were actually published, nor to give any clear conception of the nature of such clauses as related to land tenure.

B. PROTECTORATE PERIOD 1888-1900

1888: Laws of Penrhyn Islands - CM. Only the 'chief laws', copied by Hunter. No express provisions about land.
(Hamilton Hunter to High Commissioner 10.9.1896 WPHC)

1890: E Akamoni i te au ture (For upholding the law) - IC. Gave the ariki of Rarotonga the power to appoint judges (apparently confirming what was in most instances the de facto situation), and confirmed the validity of all existing laws meantime.
(NZPP A3 1891:33)

1890: Power of Pardon Act - IC. Gave the Council power to pardon persons sentenced in any Court, and to remit or reduce punishments.
(NZPP A3 1891:34)

1891: Letter of instructions from Governor of New Zealand to Mr Moss (first British Resident) 25.2.1891 - Gov. '...you hold your appointment under the Governor of this colony, who instructs you after consultation with his Advisers. ...leave the natives in the possession of their existing right of legislating for themselves, reserving to yourself a veto on all laws which may seem to interfere with the liberties of Her Majesty's subjects...'. Pointed out that it was the policy of the British government in the Pacific

not to allow the purchase of land by private persons excepting through the government, and enjoined Mr Moss to adhere to that policy in the Cook Islands.
(NZPP A1 1891)

Various dates: Laws of Mangaia as at 1891 - CM. (Being a listing of laws then in operation.) Clause 16 read: 'Disputed boundaries - The Judge shall inspect the land and decide. If the disputants still fight, they shall be fined $20 each - namely, $4 cash and $16 trade.'
(NZPP A3 1892:17)

1891: A Law to Provide for the Good Government of the Cook Islands - FP. Constituted the Federal Parliament and provided that 'each island shall continue to govern itself as much as possible' subject to all future local laws being approved by the British Resident.
(NZPP A3(a) 1891:6-7)

1891: Law for the future government of Mangaia - IC. Appointed judges for each district and made future appointments of judges the responsibility of the ariki and 'governors'. Created a Council which was henceforth to be the only law-making body on the island.
(NZPP A3 1892:13-14)

1891: A Law to Provide for the good government of Aitutaki - IC. Set up a council similar to Mangaia's with powers, inter alia, to appoint judges. (Judges were appointed by 'Law No.3 - The Judges' on the same day.)
(NZPP A3 1892:23)

1891: To settle disputes about Land (Aitutaki) - IC.
'1. That all disputes as to the boundaries or ownership of land shall be heard by the three Judges, whose decision shall be reported to the Government [i.e. the four ariki plus six members of the local Council] for confirmation.
2. Any person feeling himself aggrieved by the Judges decision must appeal to the Government. The Government shall then refer the whole case to the Council, whose decision shall be final.'
(NZPP A3 1892:27)

1891: For Electing the Au (Rarotonga) - IC. Clause 5 empowered local Au (district councils) to impose ra'ui on crops. Other powers of the Au were very loosely defined but included a duty to 'maintain order' and a right to make laws. A clearer definition of their powers was given in The Au Empowering Act 1899: see under that heading. (A similar law was enacted by the Council of Mangaia.)
(NZPP A3(a) 1891:22)

1891: Amendment to Law 11 (of the Laws of Rarotonga 1879) - IC. Provided that this law would henceforth be executed not by district courts but by the judges of the three districts sitting together. (The law referred to dealt with disputes involving land between senior and junior relatives in the same authority structure.)
(NZPP A3(a) 1891:23)

1891: A Law to establish a Supreme Court - FP. Established a Supreme Court for the Cook Islands Federation and gave that Court exclusive jurisdiction in dealing with breaches of Federal laws. It also provided that any case involving foreigners might, at the request of either party, be transferred to the Supreme Court. (The title of the Court was changed in 1894 to the Federal Court.)
(NZPP A3(a) 1891:13)

1894: Declaration as to Land - FP. 'We, the Parliament of the Cook Islands Federation...hereby declare the customs of the Maori in that matter from time immemorial to the present day.... The land is owned by the tribe; but its use is with the family who occupy that land. The family consists of all the children who have a common ancestor, together with the adopted children, and all the descendants who have not entered other tribes. The control of that land rests with the head of the family; but it is for the support of all the family.... No Maori can sell to another Maori, or to a foreigner. Therefore on that point we need not say more.
Land has been leased in two ways: (1) For fixed periods, and with rent to be paid in money; (2) for indefinite periods on the Maori tenure, and with rent to be paid in services or in kind.... [Leases] are to be interpreted according to Maori law, and not according to foreign laws or customs....'
It also provided that the right of access to water and to the use of roadways could not be denied except by a law of the Council.
(NZPP A3 1895:8)

1894: Animals Act (Rarotonga) - IC. Provided for the impounding of wandering stock and penalties for allowing animals to stray onto the land of others.
(NZPP A3 1895:18)

1894: Guavas Act (Rarotonga) - IC. Required landowners to destroy all guava trees growing on their land. (This was the first provision relating to noxious plants in the group; later provisions for the control of noxious weeds and pests have been enacted from time to time, but are not included in this list.)
(NZPP A3 1895:19)

1894: Tax for Roads Act (Rarotonga) - IC. Imposed a road tax of one dollar per year on every householder, and an additional tax of one-quarter cent per foot to one cent per foot on the road frontage of all other occupied lands. (This was the first provision relating to any form of taxation on the basis of landholding.)
(NZPP A3 1895:19)

1894: Land Occupants Act (Rarotonga) - IC. Clause 1 provided that disputes over the ownership and use of land were to be heard by the judge of the relevant district.
Clause 2 required that 'The Judge shall then hear the case, and send his judgement to the Ariki of the district, whose decision thereon shall be final'.
Clause 3 provided that persons occupying village lands were guaranteed 'full and quiet possession of such land' so long as the person concerned or his

descendants continued to occupy. If the occupier died without issue the land was to revert to the donor or his issue.

Clause 4 provided that if the original owner of any land died without issue, such land was to revert to 'the people and Government of Rarotonga', to be dealt with by the Council for public purposes.

(NZPP A3 1895:20)

1895: Land for Public Purposes Act (Rarotonga) - IC. Empowered the government to acquire land for public purposes and provided procedures for determining compensation for lands taken.

(NZPP A3 1896:23)

1895: An Act to Guard against secret dealings in Native Lands - FP. Required that all land transactions must be registered within three months of negotiation and that all past transactions must be registered before 31.12.1895 or they would not be recognized in any court. Registration was designed to give security to the deed itself, but did not give it any additional validity. All deeds registered were to be publicly notified.

(NZPP A3 1896:10-11)

1896: Te Au Ture Enua i Manihiki (The Land Laws of Manihiki) - CM. Part 1 provided that all land claims were to be based on the current situation, and that old claims, past wars, etc., were not to be considered.

Part 2 concerned the resolution of disputes between landowners and persons who planted by permissive occupation.

Part 3 dealt with cases where coconut trees were owned separately from the land on which they were planted (a special feature found on the atolls).

Part 4 concerned the land of sub-chiefs.

Part 5 regulated the planting of land other than one's own, and delimited the period of non-use after which land rights lapsed.

Part 6 specified the rights of orphan children.

Part 7 concerned relations between chiefs and commoners on the land.

Part 8 dealt with tribute.

Part 9 concerned lands which changed hands during heathen times.

Part 10 dealt with customs relating to coconut trees.

Part 11 specified the conditions under which gifts of land were permissible.

Parts 12 and 13 dealt with wills relating to land.

Part 14 dealt with delegation of rights by absentees.

Part 15 provided penalties for breaches of the law.

(NLC)

1898: High Court Act - FP. Repealed the 'Law to Establish a Supreme Court' of 1891 and created a High Court for the Federation and gave it exclusive jurisdiction in all offences against Federal laws, in all cases between foreigners or between foreigners and Maoris. Under certain circumstances also cases were to be transferred from district courts to this Court. Judge Gudgeon took land cases under this Act - e.g. Ioi Karanga 14.4.1900.

(NZPP A3 1899:11-12)

1899: The Land Act - FP. The full title of this act was 'An Act to Secure uniformity in Leases and Security of Tenure to Foreign Lessees within the Island of Rarotonga'.

Clause 2 established a Land Board to consist of the British Resident and the five ariki of Rarotonga. Any mataiapo whose land was the subject of enquiry was entitled to a seat on the Board during the course of the enquiry.

Clause 3 required the Board to protect the rights of the native population.

Clause 4 required that before a lease could be registered it had to have the approval of the British Resident and at least three ariki.

Clause 5 empowered the Board to impose conditions on leases, including the condition that specified numbers of commercial trees be planted.

Clause 9 prohibited the leasing of land which was in the beneficial occupation of a native, or when a native had been ejected in order that the land may be leased.

Clause 16 forbade the payment of rental more than one year in advance.

Clause 18 read 'And whereas a large portion of the best land...is not in the beneficial occupation of any person...and whereas there are large numbers of persons of the Maori race in this island who have no land rights, and who will never become producers unless fixity of tenure is given to them; it shall therefore be the duty of the Board to consider the means whereby land on perpetual lease may be secured to all of the deserving members of the native-born Rarotongans'.

When enacted on 26.7.1899 this act was applied to all islands in the group.

(NZPP A3 1900:8-9)

1899: An Act to Provide for the Rating of Land in the Occupation of Foreigners - FP. Empowered the government to impose an annual tax not exceeding one shilling in the pound of the rental value of land occupied by foreigners. The purpose of this act was to raise revenue for public works.

(NZPP A3 1900:5)

1899: The Au Empowering Act - FP. Defined the powers of the existing Au (district councils) to include the imposition of ra'ui, the right to order any landowner to plant such crops as might be specified by the Au, the duty to report to the government those landowners who neglected their lands, the duty to protect the land rights of the sick and underprivileged, the right to contract for the bulk sale of the produce of the district, and the right to impound wandering stock.

(NZPP A3 1900:4-5)

1899: Statute of Mangaia - FP. Clause 21 gave the local judge power to hear land cases, but a right of appeal to the Chief Judge of the High Court (Gudgeon) was provided for.

(NZPP A3 1900:9)

1899: Statute of Atiu, Mauke and Mitiaro - FP. Clause 24: as for clause 21 of the Statute of Mangaia.

(NZPP A3 1905:73-5)

1899: Statute of Rarotonga - FP. Clause 24: as for clause 21 of the Statute of Mangaia.
(NZPP A3 1905:71-3)

1899: Statute of Aitutaki - FP. Clause 50 established a separate court for land cases, to comprise the Resident European Magistrate and two assessors (one to be chosen by each of the parties).
(NZPP A3 1900:19-20)

1899: Rules for the Conduct of the Resident Magistrate's Court and Native Land Court under the Statute of Aitutaki 1899 - RC. Rules of procedure. Provided for an appeal from this court to the High Court. Scale of fees for court services scheduled.
(Cook Islands Gazette 11.12.1899)

1900: The Islands Statutes Amendment Act - FP. '8. The High Court of the Cook Islands may, at the request of the Chief of the Government, do any one of the following things in order to decide or prevent land disputes:-

(a) May order a survey of the land.
(b) May ascertain, and inscribe on the rolls of the Court, the names of all the owners of any block of land.
(c) May assess the land-tax payable by such land in each year in order to defray the costs of surveying and of the hearing.'

(NZPP A3 1901:10)

C. DEPENDENCY PERIOD 1901 - PRESENT

1901: Cook and Other Islands Government Act (and amendments) - NZP. Section 2 provided that all existing laws and customs were to remain until alternative provisions were made.

Section 3 permitted any New Zealand enactment to be applied to the Cook Islands.

Section 4 confirmed the existing courts of justice but provided an appeal from the High Court of the Cook Islands to the Supreme Court of New Zealand.

Section 6 provided for the establishment of a Land Court in the following words: 'The Governor, by Order in Council, may from time to time establish a tribunal, or appoint an officer or officers, with such powers and functions as he thinks fit, in order to ascertain and determine the title to land within the said islands, distinguishing titles acquired by native custom and usage from titles otherwise lawfully acquired, and may provide for the issue of instruments of title, and generally make such provision in the premises as he thinks fit'.

Section 7 required that future ordinances of the Federal and Island Councils be assented to by the Governor before coming into effect.

Section 12 empowered the Governor to take land for defence or public purposes. (This was an act to provide temporarily for the administration of the Cook Islands and was to have effect only until the next session of the New Zealand Parliament. It was subsequently extended for a further two years by the Cook and other Islands Government Amendment Act of

1902, and made permanent by the Cook and other Islands Government Amendment Act of 1904.)
(Statutes of New Zealand 1901)

1902: Order in Council - OIC. Part 2 established the 'Cook and Other Islands Land Titles Court' under Section 6 of the Cook and Other Islands Government Act of 1901. It was to consist of not less than two judges, one of whom was to be a European and he was to be designated Chief Judge. The Chief Judge was empowered to appoint assessors as required.

Part 3 laid down the jurisdiction of the Court as follows.

(1) To investigate title to land.
(2) To determine the relative interests of various owners.
(3) To effect exchanges.
(4) To determine successors.
(5) To grant probate on wills.
(6) To limit alienation of particular lands.
(7) To determine, confirm or alter leases.
(8) To restrain persons from certain acts in relation to land.
(9) To determine that certain lands should be held in trust.
(10) To reserve land for public purposes.
(11) To fix rents for lands occupied by natives other than the owners of the lands concerned.
(12) To issue instruments of title.
(13) To appoint trustees.
(14) To rehear cases which had been appealed against.
(There were in addition other minor provisions.)

Part 4 dealt with the operation of the Court and provided, inter alia, that:

(1) while the Chief Judge could sit alone, no native Judge could sit except with the Chief Judge;
(2) no person could be represented or assisted by an agent or counsel without the prior consent of the presiding Judge, and such consent could be withdrawn at any time;
(3) the Court could amend any 'defects or errors' in any proceeding or document in order to give effect to 'the intended decision';
(4) the Chief Judge could make rules of practice and procedure for the Court.
(NZPP A3 1903:7-10)

1902: Rules and Regulations of the Cook and Other Islands Land Titles Court - RC. Made under the above Order in Council. In addition to procedural matters these rules empowered the court, inter alia:

(1) to partition land;
(2) in the case of multiple ownership, to define the relative interests of the various owners in shares or fractions of a share;
(3) to amend wills relating to land if the testator made inadequate provision for some of his heirs;
(4) to control and confirm alienations of land, and generally to implement the provisions of the above Order in Council. Rule 127, however, empowered the Court to dispense with any of the rules excepting rules 111 to 119 (re instruments of title, etc.).
(Cook Islands Gazette 14.11.1902)

1902: The Protection of Property Ordinance - FC. Provided for the compulsory fencing by all occupants of a tapere of the land of any man within that tapere whose lands had suffered repeated acts of petty larceny. Also provided for punishment of trespassers.
(Cook Islands Gazette 29.4.1902)

1902: Regulations for the leasing of land at Aitutaki - RC. Required that before any lease could be registered or recognized on Aitutaki, the Resident Magistrate had to certify that the lessor was in fact the owner of the land concerned, and that the terms of the lease were fair and reasonable.
(Cook Islands Gazette 24.6.1902)

1903: The Coast Timber Conservation Ordinance (Rarotonga) - IC. Placed all coastal lands under the control of the district ariki and forbade landowners to exercise any act of ownership on those lands without the written permission of the ariki concerned and the Resident Commissioner.
(Cook Islands Gazette 23.2.1903)

1903: The Manihiki Ordinance No.1 - IC. Gave the Island Council power to control wandering stock and trespass and to impose ra'ui over all lands on the island. Limited the number of coconuts which could be used for ceremonial exchanges.
(Cook Islands Gazette 1.9.1904)

1903: The Fencing Ordinance (Rarotonga) - IC. Required all lands in the occupation of Europeans and 'half-castes living as Europeans' to be boundary fenced at the expense of the occupier.
(NZPP A3 1904:14-15)

1904: The Au Empowering Act Amending Ordinance - FC. Transferred the 'duties, obligations and powers' of the Au to the Island Councils (see The Au Empowering Act 1899).
(NZPP A3 1905:11-12)

1904: Order in Council - OIC. Applied Section 50 of 'The Native Land Claims Adjustment and Land Amendment Act 1901' (of New Zealand) to the Cook Islands. This provided that the Land Court would not recognize claims by adoption unless the adoption had been registered, and made provisions to facilitate such registration.
An additional Order in Council in 1905 made certain amendments of detail to the above order.
(NZPP A3 1905:40A-41)

1904: Cook and Other Islands Government Amendment Act - NZP. This act made the Cook and Other Islands Government Act of 1901 permanent. It also empowered the Land Court to fix compensation for land taken for public purposes. It abolished ariki courts (which had dealt with land cases) on those islands where a European Resident Agent was stationed, and made provision for lagoons containing pearl shell to be declared Crown land.
(Statutes of New Zealand 1904)

1906: Proclamation - GG. Proclaimed the Manihiki and Penrhyn lagoons to be Crown lands set aside as public pearl-shell fisheries. (Regulations governing the use of the lagoons were thereupon promulgated by the British Resident.)
(NZPP A3 1907:27-8)

1906: Regulations dealing with land taken for township purposes in the Cook Islands - GG. Provided for the administration of lands taken for township purposes. (It was at that time intended to develop the Tutakimoa tapere of Avarua as a model township.)
(Cook Islands Gazette 5.7.1906)

1906: Regulations as to Making and Assessing Compensation claims for lands taken for public works - GG. Provided that compensation claims were to be determined by the Court, but that two assessors would be appointed to sit with the Court. One assessor was to be nominated by the Crown and the other by the claimant.
(Cook Islands Gazette 26.2.1906)

1906: The Unimproved Land Tax Ordinance - FC. Empowered any Island Council to inspect lands and submit to the Resident Commissioner a list of lands which were 'unimproved and unplanted'; and empowered the Resident Commissioner to impose a tax on such lands up to one shilling per acre per annum.
(Cook Islands Gazette 1.8.1906)

1906: Suggestions for the Utilization of the Waste Lands at Rarotonga (Public Statement by Resident Commissioner) - RC. Offered the people of the Cook Islands three alternatives in respect to their waste lands: (1) lease to Europeans, (2) 'Call upon the local Administration to aid you in planting the waste lands with the coconut palm' or (3) the government may take the land compulsorily. Pointed out that people would 'do well to understand that they will not be allowed to obstruct the prosperity of the island by keeping land in its present state of unproductiveness'.
(Cook Islands Gazette 1.8.1906)

1907: The Resident Agents Courts Jurisdiction Ordinance - FC. Clause 6 empowered the Chief Judge of the Native Land Court to authorize Resident Agents to take evidence in land cases. Such evidence was to be despatched to the Chief Judge.
Clause 7 repealed those parts of the following enactments which dealt with land matters:
Statute of Mangaia 1899, Statute of Rarotonga 1899, State of Aitutaki 1899, Statute of Atiu, Mauke and Mitiaro 1899 and the Islands Statutes Amendment Act 1900.
(Cook Islands Gazette 11.7.1907)

1908: Alienation of Lands Ordinance - FC. Repealed 'The Land Act' of 1899 and 'An Act to Guard Against Secret Dealings in Native Land' of 1895. Required that all land alienations needed confirmation by the Land Court (including those made prior to the establishment of the Court). Provided that no person was permitted to close or obstruct any road, right of way or water course on his land without the approval of the Land Court.
(NZPP A3(a) 1908:3-4)

1908: The Cook Islands Government Act-NZP. A consolidation act. It confirmed that ariki courts could continue to function on those islands where no European Resident Agent was posted. The name of the Land Court was changed from 'The Cook and Other Islands Land Titles Court' to 'The Cook Islands Land Titles Court', but its powers and functions were not altered.

(Statutes of New Zealand 1908)

1908: Te Mana Ra'ui (The power of ra'ui) (Public Statement by Resident Commissioner) - RC. Asserted that the ancient right of ra'ui no longer existed in respect of any land which has been investigated by the Native Land Court. (Note: later Resident Commissioners varied in their practice in relation to ra'ui, some sanctioning them in relation to lands investigated by the Court and others not allowing them.)

(Cook Islands Gazette 17.1.1908)

1908: Ko te Akonoanga Oire (Village lands). (Public Statement by Resident Commissioner) - RC. Laid down the practice of the Land Court in relation to house-sites in villages set up after the introduction of Christianity.

(Cook Islands Gazette 5.3.1908)

1908: Land Administration (Public Statement by Resident Commissioner) - RC. Stated that the aim at the Land Court had been to aid commoners and under-privileged people and noted that this was necessary owing to the excessive increase in chiefly power over land since about 1850. The Court assured persons who had been oppressed by the chiefs that their claims would be given favourable consideration. It advised against the custom of including the whole family in the title for the land and recommended all families to divide their lands such as to give each individual member his own piece. 'Now by your own obstinacy you have placed yourselves in this position that the lazy man will benefit by the work of those who are industrious and therefore no work or improvements will be made.' The cause of this 'stupidity', he said, was the custom of allowing the head of the family to control the land on behalf of the family. Stated that the Court regarded all owners as equal irrespective of rank. Stated further that 'all of the children have an absolute right to succeed their parents in all the lands, subject to sensible divisions they may themselves make'.

(Cook Islands Gazette 3.4.1908)

1913: Order in Council - OIC. Provided that the Land Court would thereafter consist of one judge, plus any other who may from time to time be appointed. (By implication cuts out Maori judges.)

(NZPP A3 1914:31-2)

1914: The Planting and Cultivation of Lands Ordinance (Mauke) - IC. Required each able-bodied man over 16 to plant a minimum of 10 coconuts, 10 bananas and 10 orange trees per month in addition to a full supply of subsistence foods. All lands were to be kept weeded and distances between trees and modes of planting were specified.

(NZPP A3 1915:50)

1914: The Planting of Lands Ordinance (Mangaia) - IC. As for Mauke ordinance above but each man to plant a minimum of 40 coconuts, 20 bananas, and 20 orange trees annually in addition to a full supply of subsistence foods. Any man who left Mangaia was required to arrange for some member of his family to look after his land during his absence. An annual inspection of all lands was to be carried out to ensure compliance with the ordinance.
(Cook Islands Gazette 20.12.1915)

1915: Cook Islands Act - NZP. This act repealed all existing laws in the Cook Islands, including those passed by the Federal and Island Councils. The Federal Council (which had ceased to function since 1912) was abolished but provision for Island Councils remained.

In Part 10 (re Crown land), section 354 vested all land in the Cook Islands which was not held in fee simple, in the Crown, subject, however, to the lawful rights of individuals. This part of the act also made provision for the acquisition of land for public purposes and creation of reserves.

Part 11 (sections 367-416) established the Native Land Court of the Cook Islands (to be identical with the earlier Cook Islands Land Titles Court) and provided machinery for its staffing, procedures and powers. Its powers were essentially the same as those of the earlier Court and included a right to grant rehearings.

Part 12 (sections 417-28) dealt with customary lands (i.e. land held 'under the Native customs and usages of the Cook Islands' and which had not been investigated by the Land Court). Section 422 required that any investigation of the title to such lands should be determined 'according to the ancient custom and usage of the Natives of the Cook Islands'. Section 423 empowered the Court, after due investigation, to issue orders of title (known as 'freehold orders') naming the owners and specifying their relative interests. Section 426 provided that such land as belonged to a chief 'by virtue of his office' should be vested in that chief and his successors in office 'in the same manner as if they were a corporation sole'.

Part 13 made provision for the partition and exchange of land and for payment in cash to equalize partitions and exchanges.

Part 14 dealt with succession by natives. Section 445 invalidated wills in so far as they applied to land. Section 446 provided that successors to land rights were to be determined 'in accordance with Native custom, so far as such custom extends; and shall be determined, so far as there is no Native custom applicable to the case, in the same manner as if the deceased was a European'.

Part 15 dealt with adoption and invalidated customary adoptions in so far as they concerned succession to land rights. Legal adoptions were to have 'in respect of succession to the estate of any Native the same operation and effect as that which is attributed by Native custom to adoption by Native custom'.

Part 16 prohibited the permanent alienation of land by natives (other than to the Crown), and limited

leases to a maximum of sixty years duration. The approval of the Land Court was made necessary for all alienations.

(Public Acts of New Zealand (Reprint) 1908-31 658-785)

1916: The Land Rating Ordinance (Rarotonga) - IC. This ordinance did not apply to government lands, church lands, or lands occupied by natives (i.e. applied only to lands occupied by foreigners). It provided for the compilation of a valuation roll and the annual rating of such lands at a rate to be fixed by the Resident Commissioner but not more than one shilling in the pound of the rateable value.

(Cook Islands Gazette 31.8.1916)

1917: The Planting of Lands Ordinance (Rarotonga) - IC. As for Mauke 'Planting and Cultivation of Lands Ordinance' 1914 but quantities specified as a minimum of 40 coconuts, 50 bananas, and 20 orange trees per year. Exception was provided for persons who had adequate reason not to plant. An annual inspection was to be carried out to ensure compliance with the ordinance. (In 1959 the Rarotonga Island Council approved in principle the idea of reviving this ordinance which had been inactive for many years, but no action has been taken to date.)

(Cook Islands Gazette 12.2.1917)

1917: The Planting of Lands Ordinance (Aitutaki) - IC. As for above except that minimum quantities of cash crops specified were 10 coconuts, 10 bananas and 10 orange trees.

(Cook Islands Gazette 19.3.1917)

1921: The Cook Islands Amendment Act - NZP. Sections 8 and 9 made further provisions for the legal registration of customary adoptions effected prior to the passing of the act (in order to protect the land claims of such persons).

(Statutes of New Zealand 1921)

1937: Fruit Control Regulations - GG. Provided for the transfer of the fruit marketing industry from private enterprise to government control.

(New Zealand Gazette 1937)

1946: Cook Islands Amendment Act - NZP. Part 2 established the 'Native Appellate Court of the Cook Islands' to consist of judges of the Native Land Court of the Cook Islands and of the Native Land Court of New Zealand. At least two judges must sit together to constitute the Native Appellate Court. It was given power to determine appeals from any final order of the Native Land Court, and provided that such orders might be appealed from as of right. The Appellate Court could either confirm, annul or vary the order appealed from, or direct a rehearing of the case before the Native Land Court. Special provision was made whereby, for a period of twelve months after the promulgation of this act, any person who claimed to be prejudicially affected by any order of the Land Court since its inception in 1902 could apply for a rehearing of the case in question.

Part 3 (section 50) empowered the Native Land Court to grant occupation rights to any individual (or individuals) provided it was the wish of the majority of the owners that this should be done. The Court was empowered to impose such terms and conditions on occupation rights as it thought fit. Any person occupying land by virtue of an occupation right shall, 'subject to the terms of the order, be deemed to be the owner of the land under Native custom'.

Part 4 provided that where it was the wish of the majority of the owners the Native Land Court could place any particular portion of land in the hands of the Administration to manage that land on behalf of, and for the benefit of, the native owners. This part of the act was designed to implement the citrus replanting scheme and provided for the provision of agricultural credit, equipment and marketing facilities.

(Statutes of New Zealand 1946)

1948: Cook Islands Amendment Act - NZP. Specified criteria of selection of the judge to act as presiding judge in sittings of the Native Appellate Court.
(Statutes of New Zealand 1948)

1948: The Atiu Planting of Lands Ordinance - LC. Provisions were similar to those of 'The Planting of Lands Ordinance' 1914 for Mangaia, but the quantities to be planted were left to be specified by the Island Council from time to time.
(Atiu files CIA)

1950: Cook Islands Amendment Act - NZP. Section 11 amended the definition of 'Native freehold land' in the Cook Islands Act 1915 to include any land owned by any descendant of a native. (This amendment was introduced owing to the fact that as the term 'Native' was defined as a full blooded Polynesian or any person 'intermediate in blood between a half-caste and a person of pure descent', those persons of mixed blood who were less than half Polynesian had been technically exempt from provisions relating to native land.)

Section 16 empowered the Chief Judge of the Native Land Court to amend errors and omissions in appropriate circumstances; such amendments to be subject to appeal if any party objected to them.

Section 17 defined the high water mark (below which all land and lagoon belongs to the Crown) as 'the line of medium high tide between the spring and neap tides'.
(Statutes of New Zealand 1950)

1952: Cook Islands Amendment Act - NZP. Section 7 vested the island of Nassau (excepting ten acres reserved for administration purposes) in 'the Native inhabitants of the Island of Pukapuka...to be held...according to the Native customs and usages of the Island of Pukapuka'.
(Statutes of New Zealand 1952)

1957: Cook Islands Amendment Act - NZP. Section 39 provided that the power of the newly-constituted Legislative Assembly would not extend to making any law which is repugnant to a reserved enactment of the New Zealand government. The reserved enactments specified included

all legislation relating to land tenure in the Cook Islands.

Section 92 empowered the Governor-General in Council to set apart any native customary or freehold land as a 'Native reservation for the purposes of a burial ground, fishing ground, village site, landing place, place of scenic or historical interest, source of water supply, church site, recreation ground, bathing-place or any other specified purpose whatsoever'. Such an Order in Council, however, was only to be made on the recommendation of a judge of the Native Land Court, and subject to the consent of the majority of the owners. A reservation was to be held for use in common by natives, or by such groups or classes of natives as were specified in the Order.

(Statutes of New Zealand 1957)

Appendix B

THE NGATI TE ORA CASE

An illustration of the effects of Court practice

Due to its greater size, more fertile soil and relatively large population, the external pressures conducive to change in indigenous custom were stronger on Rarotonga than on any of the smaller islands of the group. And with its superior harbour facilities the district of Avarua became the centre of foreign initiated activity for the group, and the site of the headquarters of mission, commercial and governmental establishments. In this area the proportion of foreigners (and consequently of uxorilocal marriages) was highest, the relative power of the ariki was greatest, and the rental value of land reached its peak.

If the changes in custom postulated by the Court actually took place, one would consequently expect to find them more pronounced in Avarua than anywhere else in the group. The lands of the Ngati Te Ora minor lineage have therefore been chosen as a test case, for the lineage and its lands were based in the Takuvaine valley - the very heart of the Avarua district.[1] Following the general pattern on the island, the Ngati Te Ora held some lands by the sea, others suitable for taro in the swampy depression, others again suitable for residence and dry land crops near the inland road (where many people lived prior to European contact) and again in the fertile valley, and the remainder in the mountain area at the head of the valley where plantains were grown and the raw materials for all forms of construction were available.[2]

This case is of special importance as illustrating the manner in which the lands of a lineage were inherited before the Land Court system modified the pattern of succession; its particular significance being due in the first place to the persons shown in the original Court title as having rights in each section of land being determined by customary allocation and not by the Court; and secondly, to its being one of the most fully documented of the early land cases. Moreover, owing to unusual demographic circumstances, there were more females entered as owners than there were males[3]

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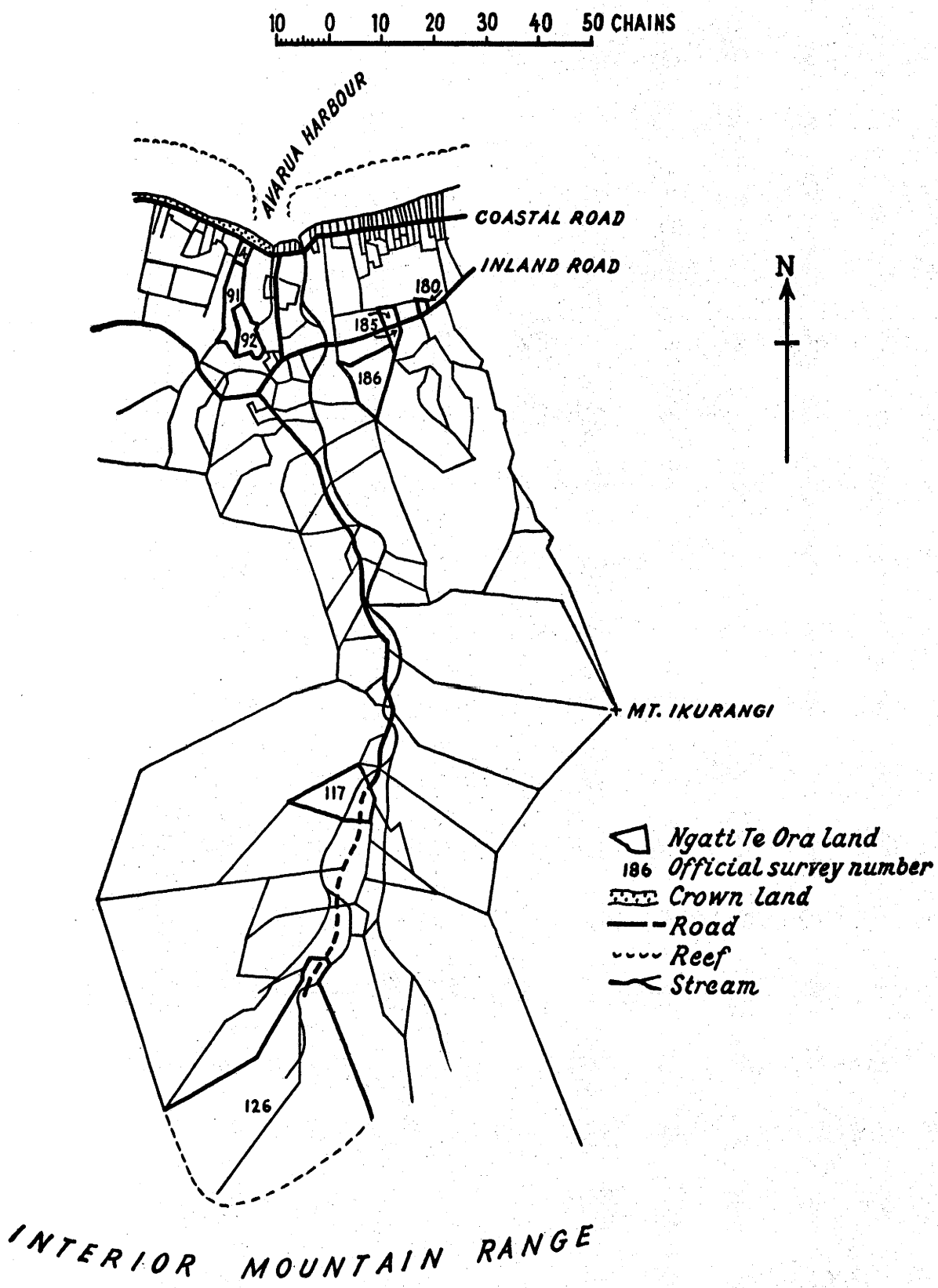
1 This minor lineage was headed by the person holding the title of Te Ora Rangatira. In the tribal authority structure Te Ora Rangatira was subordinate to Makea Nui Ariki.

2 See map attached.

3 Of a total of 24 persons included as owners in the 7 sections, 11 were males and 13 were females. As some persons were included in more than one section there was an average of 5.7 owners per section.

NGATI TE ORA LANDS
TAKUVAINE VALLEY, RAROTONGA



TYPICAL DISTRIBUTION OF MINOR LINEAGE LANDS TO INCLUDE SOME COASTAL LAND (SECTION 4) SOME TARO SWAMP LAND (SECTIONS 91,92 AND PART 117) SOME GARDENING AND RESIDENTIAL LAND (SECTIONS 180,185 AND 186) AND SOME BUSH LAND (SECTIONS 126 AND PART 117).

and as a consequence it was the type of case that led the Court to believe that women now enjoyed equal rights with men. A more detailed analysis, however, indicates that during the pre-Court era the transfer of land rights in the Ngati Te Ora lineage invariably followed principles which were an accepted part of indigenous custom.

The attached genealogy of the Ngati Te Ora lineage begins with one Uriarautokerau, who was probably born towards the end of the seventeenth century. However, as some witnesses did not accept him as their progenitor,[1] let us commence with Te Ururenga. The only siblings of Te Ururenga mentioned were three sisters. None of their issue laid any claim to the land, nor are they referred to as members of the Ngati Te Ora lineage.[2] This is to be expected as, if they married out, their issue would in the normal course of events belong to the father's lineage. Te Ora[3] may well have had siblings (as witnesses did not claim that he was the sole issue of Te Ururenga) but none of their issue claimed or was mentioned during the hearings.

Seven persons were mentioned as being children of Te Ora. Three of these were males and issue from them were recognized as belonging to the lineage. The sex of another three was not mentioned, nor were their issue. Presumably they were persons who married out, were adopted out or died without issue; in any case no further reference was made to them during the hearings. The last[4] was a person whose sex was not stated, but from whom at least some issue were accepted as members of the lineage. If this person was male, it is logical that his children would retain his lineage affiliation. If a female, the link could be retained by her marriage being uxorilocal, by her children being illegitimate, or by one or more of her issue being adopted back into her born lineage. This last possibility appears quite likely for claims are made through only one child. Of the seven persons named in the fourth generation then, claims are made through only four.

In the fifth generation, claims are made through the issue of the four persons mentioned in the previous generation, but only through <u>one</u> of the issue of each person; in each case a male. It is unlikely that only one of each bore issue. In the case of Mararaauta,[5] who held the title of Te Ora, only one son is mentioned by name, and he inherited the title. Passing reference is, however, made by one witness to the fact that there were other children, but that their line had died out, although this could, of course, mean that they had been absorbed into other lineages. Only

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1 Presumably due to his being described as a refugee from another district.

2 Details of the numerous issue of Tamapua (the third sister) have been located, but not those of the other sisters. Most witnesses who referred to Te Ururenga made no mention of the sisters.

3 Shown on the genealogy as <u>(1) Te Ora</u>, 3rd generation, sheet 1

4 Konapou, see genealogy, 4th generation, sheet 1. For issue see sheet 4 and 4a-b.

5 See genealogy, 4th generation, sheet 2.

one of Mararaatai's[1] issue (a son) is mentioned, no reference being made to whether or not this was the only child. Likewise, only one son of Konapou[2] was referred to, though one witness said that there were possibly other issue. Tamaanga[3] had two sons, only one of whom had issue. If there were daughters, they were sloughed off by the customary process of joining other lineages.

Considerably more detail is available for the sixth generation, for it is the generation preceding that of the oldest witnesses who gave evidence before the Courts. There were still the four divisions each headed by one of the four persons mentioned in the last paragraph, though most of them in this generation are shown as having multiple offspring.

In the seventh, eighth and ninth generations we find the persons who claimed rights to the Te Ora lands before the Land Court in 1908. One branch of the lineage claimed to the exclusion of members of another branch, but the matter was not decided in Court, for in response to a request by a third party the Judge permitted the lineage to withdraw and make a settlement in the customary manner.[4]

Seven separate sections of land were involved and, by the usual customary process of allocation among those entitled, the lineage agreed on the names of the persons who were to have rights in each section.[5] These names were then submitted to the Court and ratified.[6] The number of persons to whom each section was allocated varied from two to ten,[7] and there was a positive correlation between the size of the section and the number of persons to whom it was allocated. There was also some correlation apparent between the closeness of blood relationship to the titleholder and the number of lands in which the particular individual was given a right. The only name included in every section was that of the Te Ora Rangatira himself.[8]

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1 Ibid. sheet 3.

2 Ibid. sheet 4.

3 Ibid. sheet 5.

4 It was uncommon for such requests to be made, but in the several instances noted, the Court invariably acceded to them.

5 The Ngati Te Ora recognized named subdivisions in at least some of these sections (e.g. see MB 5:178). Unfortunately the evidence does not show whether or not the various persons or subgroups in each section were to use particular subdivisions of land. It would be in accordance with custom for each kiato to be allocated particular subdivisions of planting land.

6 MB 4:288-9 NLC.

7 Actually eleven were included in one section, but one name (that of the ariki) was later deleted.

8 At that time Eturoa Taopua - see genealogy, 8th generation, sheet 2.

Even in the kopu rangatira itself,[1] not all the issue of Eturoa[2] were included. Te Upoko, the daughter of Teioata, was included in one section. Teioata was the first-born daughter of the rangatira, and as such would usually be permitted to retain rights in <u>one</u> section of land as a marriage portion; this being even more probable as she married a mataiapo - a man of higher rank than herself. Te Upoko was her only child and the rights accordingly passed to her. Ngamata and her issue (if she had any) were not included. Ono was specifically described as having only one born child, Toreka.[3] In 1907, when the previous incumbent died childless, the title reverted through Toreka to her son, Eturoa Taopua. Toreka's name was included in one section of land. Ono had two adopted sons, one of whom was given rights in two sections of land, and the other in one. A right was also given to Pita, one of his adopted grandsons.

Aitu, the daughter of the titleholder and his only surviving born child, had been adopted out at a time when the title was held by Te Ora.[4] When the title reverted to her father she 'came back' into Ngati Te Ora and was included in two of his sections.[5] Three of his adopted children were also given rights, each in two sections. Though he had at least two other 'feeding' children, they were not provided for.

It is of interest to note that despite the very widespread incidence of customary adoption (to the extent that almost every family has one or more such 'feeding' children) the only adoptees included in the Ngati Te Ora lands were the adopted sons of Ono and those of Eturoa Taopua, neither of whom had any born sons and both of whom were members of the kopu rangatira.

Tekura, the eldest daughter of Te Ora Marae, married out and had issue, though how many is not known. She was the eldest daughter of the titleholder and it is accordingly not surprising to find that one of her offspring was included in one of the sections of land.[6] Kauvai died without recognized issue. Tangiia was said to have had but one child, a daughter. ~~Not only did Tangiia have no male issue; but~~

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1 I.e. those persons listed on sheets 2 and 2a who have not subsequently left the lineage.

2 Shown on the genealogy as <u>(3) Eturoa</u>, 5th generation, sheet 2.

3 As she actually occupied Ngati Te Ora lands it is likely that this was an uxorilocal marriage. - MB 19:90 NLC.

4 Shown on the genealogy as <u>(6) Te Ora</u>, 8th generation, sheet 2. This man had Te Ora as a personal name as well as a title name.

5 MB 19:20 NLC. She nevertheless retained rights to certain lands granted to her by her adoptive parents. - See MB 21:47.

6 When he died without issue a meeting of the lineage was held and it was decided that his rights would revert to the titleholder. - MB 16:219 NLC.

Nor did any of his siblings have sons surviving at the time of the allocation. Under these circumstances it is to be expected that rights would pass through his daughters to his grandsons; and two of them are in fact included,[1] though none of the grand-daughters. Rangi, the last child of Eturoa, married out and had numerous issue, none of whom claimed or were included.

The kiato under Mararaatai[2] seems to have gone out of existence. Itiotera,[3] the only person through whom any claims were traced, was absent from the Cook Islands for many years in missionary service. Moreover, his wife was the daughter of Ringiao Putua, a rangatira of high standing, and the children adhered to her lineage. Only three of their numerous issue were included in the Te Ora lands - all in the one section.[4] The most senior of these was, at the time of his inclusion, holding the rangatira title of his mother's lineage, and the fact of his inclusion in this section of Te Ora land constituted the recognition of the link between the groups. He was not the head of a kiato within Ngati Te Ora, and was not a primary member of the lineage. The second person included was one of this man's sisters, and the third was the eldest of her children.

The kiato from Konapou[5] traces through Kiro, whose only child, a son, died without issue. Of his two daughters, the eldest bore a son and rights accordingly passed through him. They did not pass to his son (for he was living in his wife's lineage on another island) but to his two unmarried daughters who were, of course, still primary members of his lineage. They were included in two sections of land. Kiro's second daughter had but one child (a girl) but as her father was unknown, she remained a primary member of the Ngati Te Ora. When she grew up she married out but, as often happened, one of her children was regarded as a member of the mother's line, and was given a right in one of the Ngati Te Ora lands.

The kiato from Tamaanga[6] was carried on by Tuki and his brother Taangarakau (and perhaps others), who lived on Ngati Te Ora lands. Tuki died while his children were still young and his wife took them back to her home lineage in Arorangi.[7] Tuki had no sons and his brother Taangarakau had no children at all. At this stage the kiato from Tamaanga went out of existence.

Some years later, however, Tuki's eldest daughter Koringo, who had been brought up with her sisters in their

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1 Pita and Vaevae, 9th generation, sheet 2a.

2 See genealogy, 4th generation, sheet 3.

3 Ibid. 6th generation, sheet 3.

4 Ibid. 7th and 8th generations, sheets 3 and 3c.

5 Ibid. sheet 4.

6 Ibid. sheet 5.

7 Witnesses say that they could have remained, but that the wife's brother insisted on taking them back to his lineage.

mother's lineage in Arorangi, married a European. Her children, as is customary when the husband is an outsider, adhered to their mother's lineage. Minnie, who was one of the daughters of Koringo, subsequently married, and she lived with her husband's lineage until one of his relatives subjected her to personal insults which Minnie reported to Makea Nui, the ariki of the district. Makea sent her to the then Te Ora Rangatira and told him to place her on Te Ora lands (presumably to avoid further trouble in the husband's lineage). Te Ora Rangatira, she claimed, allocated land for her use, but her husband did not wish to shift and she remained with his lineage.

In 1908 Minnie claimed a right in the Te Ora lands. Whether she was then still married to her first husband is not clear, but about this time she married a Chinese. The dispute of 1908 was between Minnie, who wanted her rights in the Te Ora lands recognized, and Eturoa Taopua, the man who had very recently acquired the Te Ora title. As previously mentioned, the issue was settled at a lineage meeting, where it was decided to admit the issue of Koringo.[1] Minnie was given rights in three of the seven lands, her unmarried sister was given rights in two, her brother was given rights in one, and the eldest sister (who had married and born children on another island) was given rights in one.

That the rights of Koringo's issue were not immediately conceded by the rangatira is not surprising, for Tuki's wife had born him no sons and had taken all her children back to her own district. There is no evidence of any of these children having maintained contact with the Ngati Te Ora, and in fact Minnie admitted that it was not until she had trouble in her husband's lineage that she found that she had a link with the Ngati Te Ora. It is logical, on the other hand, that when trouble did occur in her husband's lineage she would explore the alternative escape routes. Under normal circumstances one would have expected her first choice to have been to take refuge in her father's lineage; but her father being a European precluded this possibility. Her status in her mother's lineage being marginal, for though she had spent her adolescence there she was not born there and had been away from that lineage and district at least since her marriage, she chose to follow the most convenient alternative - to re-establish herself as a member of her maternal grandfather's lineage. Had his brother or other members of that kiato been living, this would probably have been easier, but in fact the kiato no longer existed. The rangatira never disputed her descent from the Te Ora line, but merely questioned her ability to claim rights in the lands after so prolonged an absence. Nevertheless, when the matter was discussed in their meeting, the rangatira and the lineage did agree to accept her back.

The next development in the succession to the Te Ora lands occurred in 1921, after the death of Eturoa Taopua.[2] His rangatira title and his land rights passed to his only child Aitu.[3]

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1 Tuki's other children and their issue were not included.

2 See genealogy, 8th generation, sheet 2.

3 It is of interest to note that this was the first time that the Te Ora title was held by a woman, though on every single occasion after European contact it would have passed to a

In 1922 a descendant of Rangi[1] stated in Court that he had asked Eturoa Taopua shortly before his death to grant a right in Te Ora land to one of her descendants. Taopua admitted their blood connection, but refused the request on the grounds that that particular group of relatives had declined to assist the Ngati Te Ora on an earlier occasion. As none of the descendants of Rangi had occupied any of the land, and as the rangatira did not approve, the Court dismissed the application.[2]

In 1940, following the death of Vaevae and Pita,[3] application was made for succession to their lands. Vaevae's children were awarded his rights in equal shares. Pita had died childless and by family agreement his share was allotted to the issue of his sister Rongo. This was in accordance with custom, for whereas the other married sisters had moved into the lineages of their respective husbands, Rongo had married a Chinese and lived on the lands of her own lineage; accordingly her children acquired their rights through their mother. The Court accordingly awarded succession as under:[4]

1.	Aiu	f.a.	$\frac{1}{8}$ share
2.	Apong	m.a.	$\frac{1}{8}$ share
3.	Taopua	m.a.	$\frac{1}{8}$ share
4.	Mata	f.a.	$\frac{1}{8}$ share
5.	Hing Toy	m.a.	$\frac{1}{8}$ share
6.	Vainga	f.a.	$\frac{1}{8}$ share
7.	Metuaone	f.a.	$\frac{1}{8}$ share
8.	Araeva	f.a.	1/24 share
9.	Rongo	f.a.	1/24 share
10.	Akeu	m.a.	1/24 share

Later in the same year Rangi[5] died. The applicant asked for succession and it was awarded as follows:

1.	Tieni	f.a.	$\frac{1}{2}$ share
2.	Reitumanava	f.a.	$\frac{1}{2}$ share
3.	Paria	m.a.	1/16 share
4.	Tangiia	m.a.	1/16 share
5.	Upoko	f.a.	1/16 share
6.	Marama	m.a.	1/16 share[6]

3 (continued from previous page)
woman if women in fact had equal claims with men in the matter of titleholding. If sex had not been a selective factor the title would have passed from Eturoa (5th generation, sheet 2) to his daughter Teioata and from her to her daughter Te Upoko. From Te Ora Marae it would have passed to his daughter Tekura and from Kauvai it would have gone to Takaina, the daughter of Tangiia (who was dead at this time). From Te Ora (8th generation, sheet 2) it would again have gone to Takaina.

1 See genealogy, 6th generation, sheet 2.

2 MB 9:162-4 NLC.

3 See genealogy, 9th generation, sheet 2a.

4 MB 13:270 NLC. The symbol 'm.a.' means 'male adult', and 'f.a.' 'female adult'.

5 See genealogy, 8th generation, sheet 4a.

6 MB 13:271 NLC.

There is no indication that the applicants asked for every one of the issue to be included in every section, or that they asked that they be awarded shares in strict proportion to their blood relationship. In addition, there is no evidence that the titleholder was in the Court or aware of the applications, and in fact on the next occasion when she was in the Court she specifically stated that she did not consider Paria and his siblings eligible to inherit the Ngati Te Ora lands then before the Court, since they lived in Borabora.[1] The inclusion of all issue of the deceased appears to be an innovation of the Court. The rigid specification of shares, while also not in accordance with custom, was required by legislation,[2] though prior to the 1940s judges seldom did specify the relative shares of co-parceners.

In 1943 two of the children of Te Rita[3] applied to the Court for admission as part-owners in one of the Te Ora lands. The 'family' (presumably lineage) is said to have agreed to their inclusion and the Court awarded accordingly. Such an award accords with custom, for while Te Rita had married out, two of her ten children had returned to her lineage of orientation (Ngati Te Ora) and had been accepted back.

In the following year, however, these same two children of Te Rita applied to the Court for inclusion in every section of the Te Ora lands.[4] The application was opposed by the Ngati Te Ora. The rangatira explained that Te Rita had lived on Aitutaki and married and died there, and that the applicants had already been admitted to one section of Te Ora land while their mother held rights in another. The evidence shows that the dispute arose (in part at least) because the applicants wanted a share of the rent that a European lessor was paying for one of the Te Ora lands.

The decision of the Court shows again a marked lack of understanding of the process of succession under native custom, since it found for the applicants and entered them as owners in the four sections of land which they had applied to enter. This gave these two people rights in six of the seven Te Ora lands. This was done despite the unanimous opposition of the rangatira and the lineage proper, and despite the fact that no member of the lineage proper (excluding the rangatira) had rights in more than three sections.

In his decision the Judge stated that 'There is no explanation given why Te Rita was omitted, and the Court can only assume her omission was due to her absence in Aitutaki.... The Court can only assume...that a mistake was made'. The Judge further referred to minutes of the 1908 hearing wherein the arrangement by the lineage that the descendants of Tuki, Itiotera and Tekura would be admitted to the Te Ora lands was recorded, and used this as an argument in favour of admission of the applicants. Had the Judge then analyzed the available information and

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1 MB 19:95.

2 'Cook Islands Act' 1915 sections 423 and 425.

3 See genealogy, 7th generation, sheet 5a.

4 MB 16:188-92.

compared the names of the persons allocated rights at that time with the total issue of the persons named, he would have found a considerable discrepancy, for not only were many of their issue not included, but also in the case of some who were not themselves included, their issue were. The persons in fact included were the kopu rangatira (who were not descended from any of the three persons named) and such of the issue of the persons named who were entitled to claim under the principles of native custom earlier outlined. In addition, there were other persons not descended from those same three progenitors, nor members of the kopu rangatira proper, but who had been granted rights to some Ngati Te Ora lands due to their customary adoption by members of that lineage.

There was at this time no Appellate Court, and even if there had been the lineage may not have appealed, for a ruling of the Court was widely regarded as final.

No sooner had the above decision been given than seven applications for succession to Te Ora lands were lodged, some of them by persons whose rights under custom would have been marginal, to say the least. The first was by Pare, a grandson of an adopted member of the lineage.[1] He recited his descent from his grandfather and named all his siblings, whereupon the Court issued a succession order in favour of all eight siblings (three males and five females), giving them equal shares to the rights their grandfather had acquired by adoption. Pare also claimed rights from his father Pita and an identical succession order was issued by the Court.[2] There was no evidence given to indicate whether or not any of this family occupied the land, or whether or not the adoptive rights given to their father and grandfather respectively were intended to be heritable. That Pare would probably not have acquired a right under custom is suggested by the fact that though his father had died 14 years previously and his grandfather over twenty years past, he did not make any claim to these lands until the decision of the Court in the previous case became known.

The descendants of Nganu,[3] another adoptee, claimed his right and it was awarded accordingly. The two children of Te Rita who had just been given rights in the other Te Ora lands now claimed succession rights from their mother and from her brother who had died without issue. The Court granted their application.[4] Minnie[5] had passed away in 1941 and her rights were now awarded equally to her children.[6]

Toko Anautoa[7] had died many years previously. It will be remembered that his grandmother was the eldest daughter

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1 See genealogy, 9th generation, sheet 2b.

2 MB 16:218 NLC.

3 See genealogy, 7th generation, sheet 2b.

4 MB 16:220 NLC.

5 See genealogy, 7th generation, sheet 5a.

6 MB 16:221 NLC.

7 See genealogy, 9th generation, sheet 2. It will be noted that he was not a primary member of this lineage.

of Te Ora Marae, and that of her issue it was decided that this one would retain a right in one of the Te Ora lands. On his death (particularly as he had no issue) his rights would, under custom, have automatically reverted to the lineage head and it was presumably for this reason that no application for succession to his right had been made when he died. In view of the decision, however, the rangatira now made formal application to succeed to his right. The rangatira's claim had been approved at a meeting of the lineage, and succession was awarded by the Court accordingly.[1]

The nature of the lineage as it would have functioned under custom was now lost. By edict of the Court, members who had had marginal secondary rights to the lineage lands were given considerably greater rights than any of the primary members. Succession had been granted to all persons descended by blood from deceased right-holders, irrespective of lineage affiliation, occupation or primary members' opinions, and without reference to other customary selective criteria - in short, the Court orders were in direct contravention of the principles of native custom by which the law required that succession be determined.[2] The lineage could no longer function as an effective landholding unit, for many of the persons with Court-granted rights were not members of the lineage and were in fact antagonistic to it.

The Cook Islands Amendment Act of 1946 gave persons who considered themselves aggrieved by decisions of the Court, the right of appeal to an Appellate Court. A spate of applications was lodged in respect of the Te Ora lands, but the only ones of relevance to the present discussion deal with the question of succession.[3] The first of these was a claim by the son of an adoptee to succeed to the rights of his father.[4] The second was an application by a woman whose maternal grandmother had been a member of Ngati Te Ora but whose mother had married on another island, where the applicant had been born. The applicant, however, was now living in Rarotonga, but her husband was from yet another island.[5] Following customary principles, she did have a right to claim, though it was marginal indeed. Next there was a claim put forward by a man whose father came from New Zealand, but whose maternal grandmother had been a Ngati Te Ora.[6] His claim was objected to by Ngati Te Ora on the grounds that he was a primary member of his maternal grandfather's lineage and lived and held lands there. He did not lodge a formal application and abandoned his case at this stage. Finally, there was a claim by the eldest

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1 MB 16:219 NLC.

2 See 'Cook Islands Act' 1915 section 446.

3 Of the others, the most important revolved around the question of whether or not the ariki held rights in certain Te Ora lands. The remaining three were claims by other lineages that certain portions of land belonged to them and not to the Te Ora lineage.

4 Tere Nganu, see genealogy, 8th generation, sheet 2b.

5 Akepaea, 8th generation, sheet 3d.

6 A descendant of Rangi, 6th generation, sheet 2.

son of Karongo,[1] a woman whose mother was the sole issue of a member of the Ngati Te Ora kopu rangatira. Karongo's husband was Chinese.

All these claims, with the exception of the third (which was withdrawn) had some merit under custom. This is not to suggest that the persons concerned would necessarily have been given a right under custom, but rather that each was claiming through recognized secondary principles. It is significant that no primary member of the Ngati Te Ora lodged any appeal or other application in respect to succession in these lands, and that those who did were all secondary members with marginal claims. The case illustrates also the increase in secondary claims resulting from marriages of Rarotongan women to men of other islands and other countries.

As a result of these appeals the Court made new orders in respect of four of the sections (sections 4, 91-2, 126 and 186). The original Court title (granted on the basis of family agreement) had awarded these four lands to an average of 8 persons each, but following its principles as already detailed, the Court made the new title orders out to an average of 27 persons each. In view of the Appellate Court decision discussed on page 240, all the issue of these owners also have fixed rights to the land and to determine the total number of right-holders it is accordingly necessary to add the issue of the persons named in the title orders. While no census of their issue has been taken, it is likely that once they were included the total number of right-holders per section would exceed 60. The average size of each section, excluding section 186 (as owing to its steepness and infertile soil it is almost unused), is five and a half acres.

One section (180) was awarded in 1908 to 9 persons. No rehearing was granted in this case, but by 1950, following the system of succession adopted by the Court, this section of one and a quarter acres had no less than 40 registered owners (if their issue be included the number probably exceeds 100). In that year, by prolonged and patient negotiation with the 40 owners, a European acquired a lease of approximately one-third of the section as a house-site. The rental of £10 per annum was divided among the 40 owners in proportion to their relative interests as determined by the Court. The owner with the largest share has a one-fifth interest in the property (and consequently in the rental) while the nine owners with the smallest shares each have a one hundred and eightieth interest.[2]

In view of the foregoing circumstances it is not surprising that at least some members of the Ngati Te Ora are known to be without adequate land on which to plant food crops, that the planting of cash crops is virtually impossible for any of them, and that a part of their land lies idle owing to a lack of agreement as to its allocation among the co-parceners.

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1 See genealogy, 9th generation, sheet 2a(i).

2 As all rentals are paid through the Court, the cost of sharing, paying and accounting for these small sums is considerable.

The Ngati Te Ora case is not exceptional. Admittedly the land rights of many lineages are not as fragmented as this one, but on the other hand there are a number which are in an even worse state. The trends illustrated in this case, however, will invariably be found operating wherever lands in the Cook Islands have been dealt with by the Court.

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Genealogy of Ngati Te Ora: explanatory note

This does not claim to be an exhaustive genealogy of all persons descended from the original progenitor, for some names were quoted in the evidence without any indication of the sex or marital status of the persons concerned, and many without details as to their issue. The number of issue shown may not be all the children of the parents concerned, for witnesses often mentioned only the persons through whom they traced their own descent, and omitted those who were not relevant to the matter under discussion. Moreover, the witnesses (who were invariably adults) seldom made mention of their own children, as the rights of the latter were dependent on those of their parents.

Likewise, there are many persons included in the genealogy who are not primary members of the Ngati Te Ora, but who have joined other lineages by marriage, adoption, or prolonged residence. Such people were admittedly once primary members of this lineage (or are descendants of persons who were) and accordingly can regain primary membership by adoption or other formal acceptance back into the group.

The genealogy was reconstructed from evidence given before the Land Court and the Appellate Court between 1905 and 1954, and includes all those persons whose names were mentioned during the relevant hearings who can be shown to be descended from the Te Ora line. Various items and segments of the genealogy were given by different witnesses at different times. Disputed differences between various versions have been noted on the genealogy, but minor variations which do not affect the principles illustrated have not been shown.

The following Court records were consulted:

Land and Titles Court Minute Book (For period 1905-13)	No:	2	pages 264, 318.
		4	48, 277-351A
		5	157-88, 223-6
		6	266
Native Land Court Minute Book (For period 1921-54)	No:	9	pages 27-8, 162-4
		10	12-15
		13	265-71
		16	188-92, 218-21, 254
		18	39
		19	64-116, 155-91, 230-40, 291-4
		21	46-59, 110-19, 164-6
		22	--
Appellate Court Minute Book (For period 1949-54)	No:	1	pages 295-300, 318, 399-402
		2	18-20, 87-95, 117-21, 143, 275-9.

Time sequence is shown on the genealogy in generations beginning from the progenitor Uriarautokerau. Working back from living persons listed, and allowing twenty-five years for each generation, it would appear that Uriarautokerau was born between 1675 and 1700 A.D.

The following symbols are used:

(1)_____	Name underlined and preceded by a number. Indicates that the person concerned held the title of Te Ora Rangatira. The number indicates the order of holding starting from Te Ora (born circa 1750 A.D.) as there is some dispute as to whether the title existed before his time.
[James Cecil]	Names in square brackets are those of non-Rarotongans married to Ngati Te Ora women.
??	Husband not known - issue therefore not legitimate and would be treated as members of the mother's lineage.
DSP	(Decede sans progene) This is the symbol used by the Native Land Court to indicate either that the person concerned died without issue, or that such issue as were born subsequently died without issue.
(Issue?)	No details recorded as to issue.
- - - - - - - -	Issue linked by dotted line. Adopted under native custom - not registered.

GENEALOGY - SHEET 1

Generation

1 Uriarautokerau (m) = (f)*

2 Tu Temaeva (f) (Issue?) | Pokoina (f) (Issue) | Tamapua (f) = Teariki Urumuku (m) | Te Ururenga (m) = Taturenga (f) of Takitumu district

3 Numerous issue (see MB 21:50) | (1) Te Ora (m)** = Teioata (f)

4 Tapauru (?) (Issue?) | Kavauri (?) (Issue?) | (2) Mararaauta (m)*** See pages 2, 2a, 2a(i), 2b | Mararaatai (m) See pages 3 and 3a-d | Konapou (?) See pages 4 and 4a-b | Tamaanga (m) See pages 5 and 5a | Vairaraina (?) (Issue?)

*Some witnesses do not accept Uriarautokerau as the progenitor, but begin from Te Ururenga.

**No evidence as to whether Te Ora is the sole issue of Te Ururenga or not.

***Some variation in order of birth.

GENEALOGY - SHEET 2
(continued from sheet 1)

Generation

4 (2) Mararaauta (m) = Waitemata (f)

5 (3) Eturoa (m) = Poara (f) | Known to have had other issue

6 Teioata (f) = Uirangi MATAIAPO (m) | Ngamata (f) (Issue?) | Ono (m) = Te Aute (f) | (4) Te Ora Marae (m) = Rangaau (f) | Rangi (f) = (m) of Takitumu district

7 Te Upoko (f) DSP | Nganu (m) = (f) | Ono (m) = (f) | Toreka (f) = Taopua (m) | Tekura (f) = Kautai (m) | (5) Kauvai (m) DSP | Tangiia (m) = Vaine (f) | Vainsao (f) = (m) | Numerous issue (see MB 19:90)

8 See page 2b | See page 2b | (7) Eturoa Taopua (m) = Mata (f) (Had 2nd wife - no issue) | Ora (f) = 1st husband (Issue?) = 2nd husband | Others | Takaina (f) = Moa (m) | (6) Te Ora (m)* DSP

9 Tai Toekutu (m) | Tearikī Moari (f) | Apu Taopua Iti (m) | (8) Aitu (f)** (Sole born issue) | Toko Anautoa (m) and other issue | See page 2a

*Te Ora died about 1907 and Eturoa held title from 1908 to 1920.

**Aitu held title from 1921.

GENEALOGY - SHEET 2a
(continued from sheet 2)

Generation

8 Takaina (f) = Moa (m)

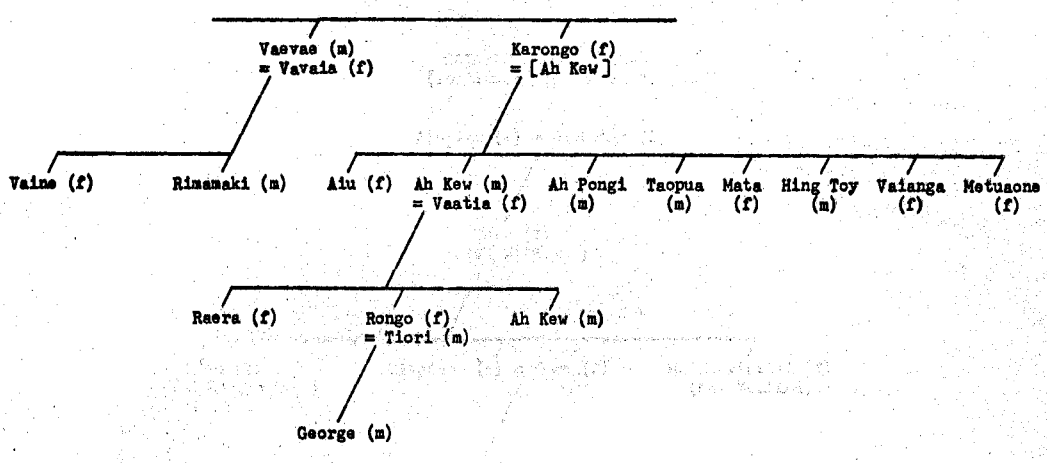
9 Motokia (f) = Te Pe Toeta (m) | Tepaeru (f) = Vakapora (m) MATAIAPO | Pita (m) DSP | Poutai (f) DSP | Vaevae(m) = Vavaia (f) | Karongo(f) = [Ah Kew] | Nate (f) = ?? | Others DSP

10 Mata (f) = Kai (m) | Opura (m) (Issue?) | Atangi (f) (Issue?) | Others DSP | Tere (m) = Nga (f) | Ruru (f) = Panikini (m) | Pita (m) = Poko (f) | Ierei (m) (Issue?) | See page 2a(i) | See page 2a(i) | Metuaone (f)

11 Ani (f) | Mii (m) | Issue in Aitutaki | Tepaeru (f) | Noru (f) | Kimi (m)

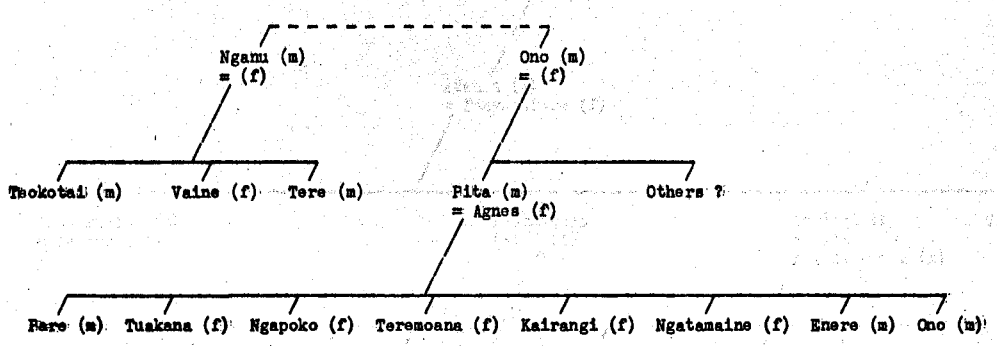
Generation

GENEALOGY - SHEET 2a(1)
(continued from sheet 2a)



Generation

GENEALOGY - SHEET 2b
(continued from sheet 2)



Generation

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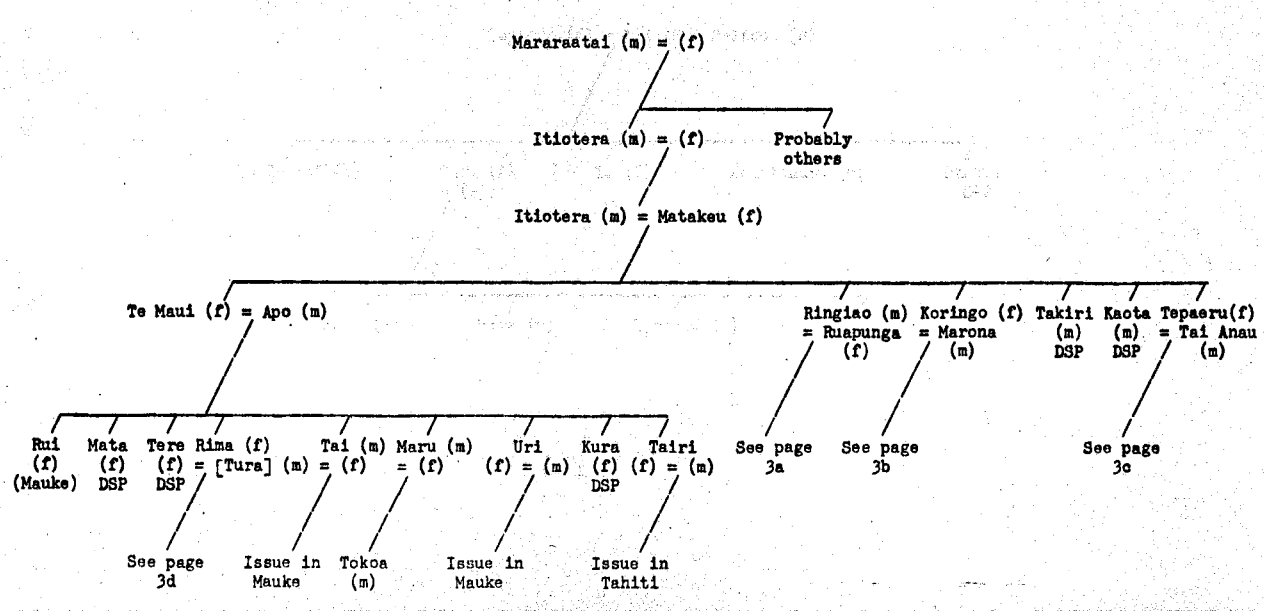
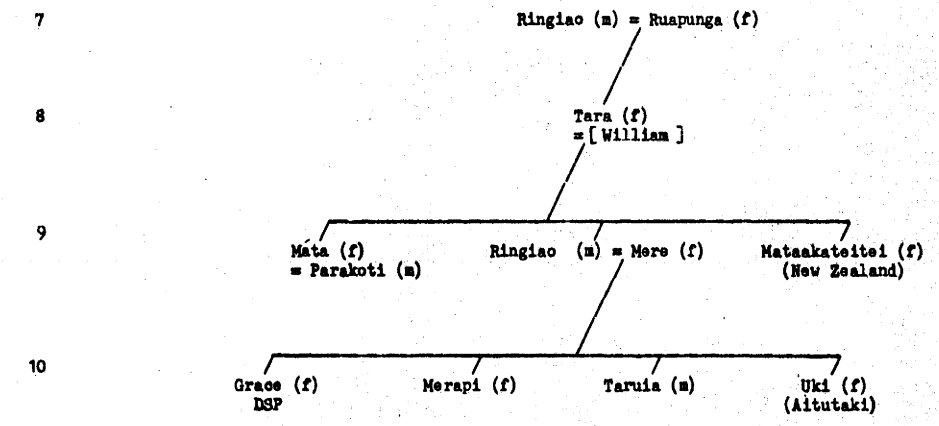
(continued from sheet 1)



Generation

GENEALOGY - SHEET 3a
(continued from sheet 3)



Generation

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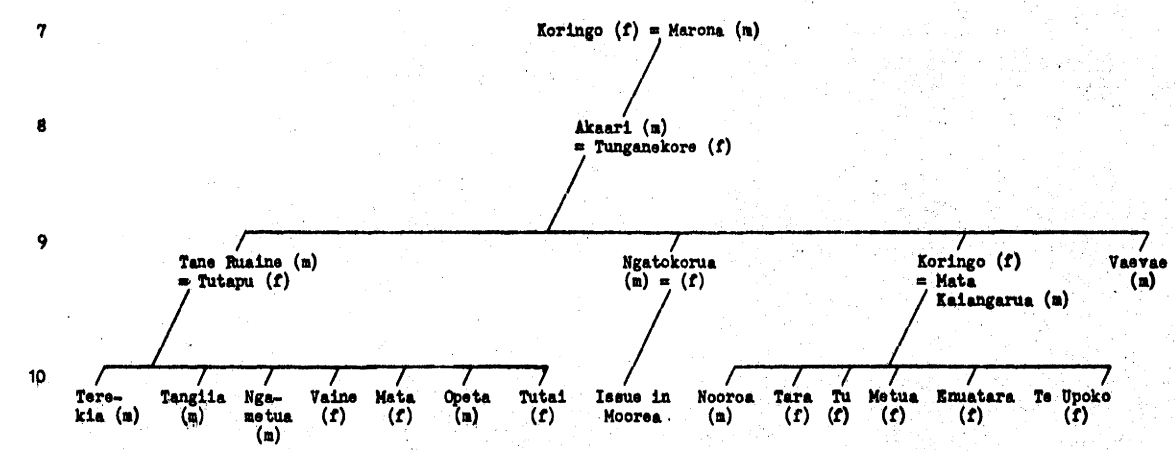

Generation

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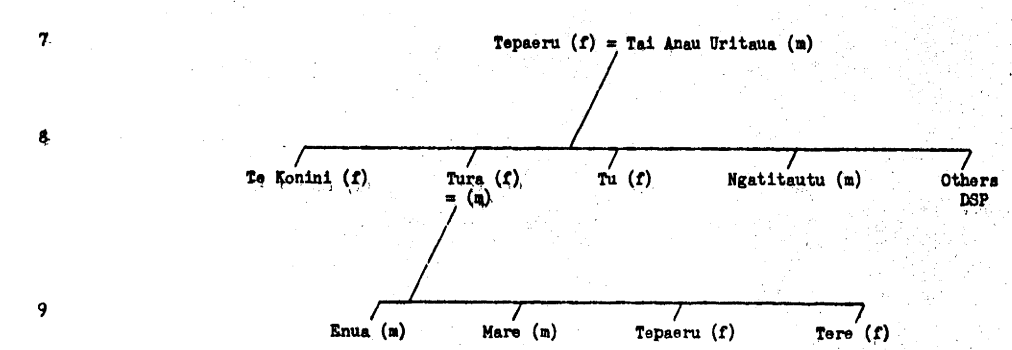

Generation

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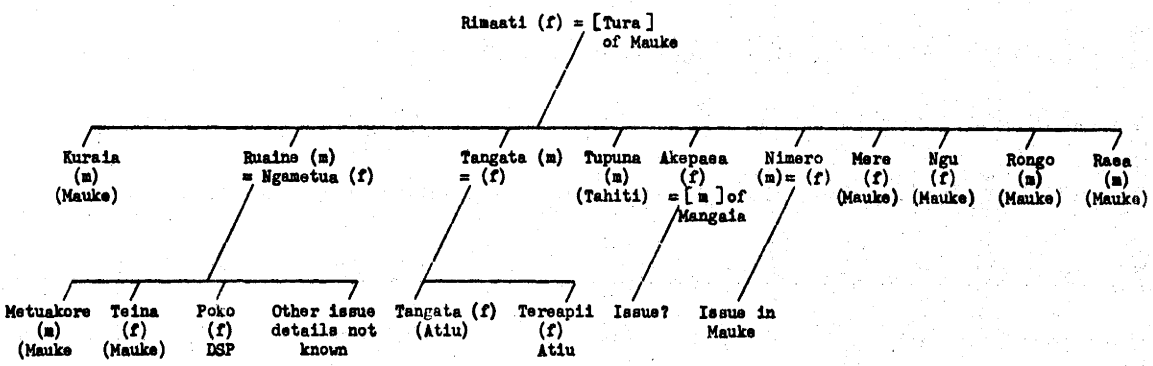

Generation

GENEALOGY - SHEET 4
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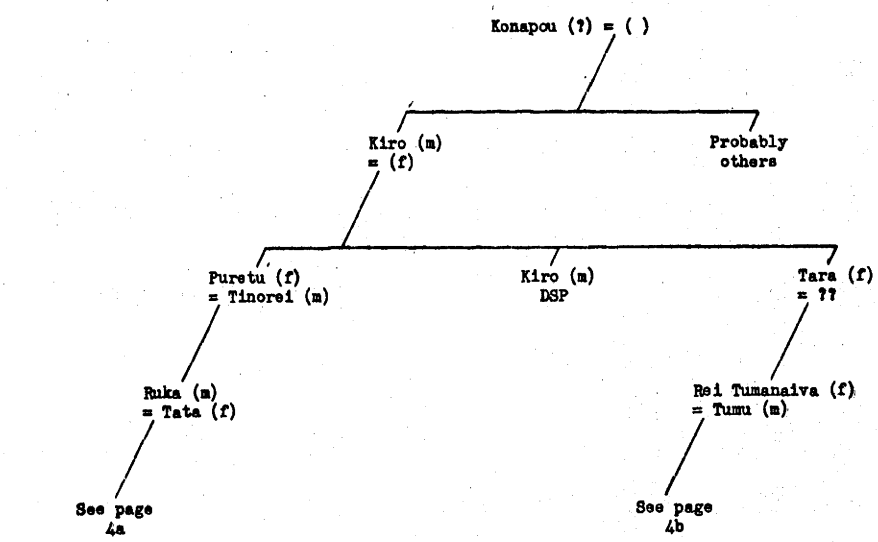

Generation

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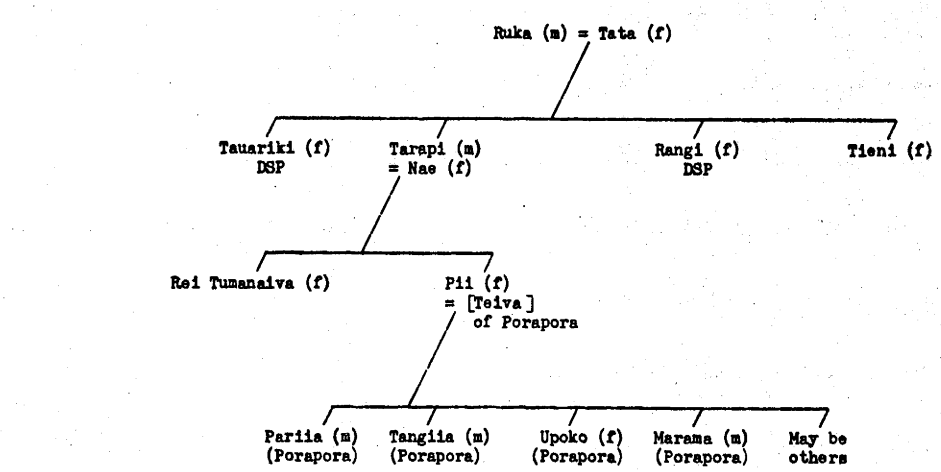

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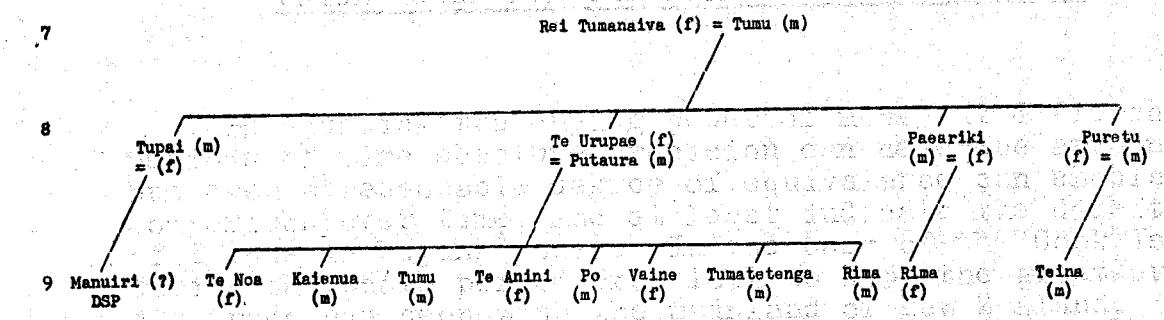

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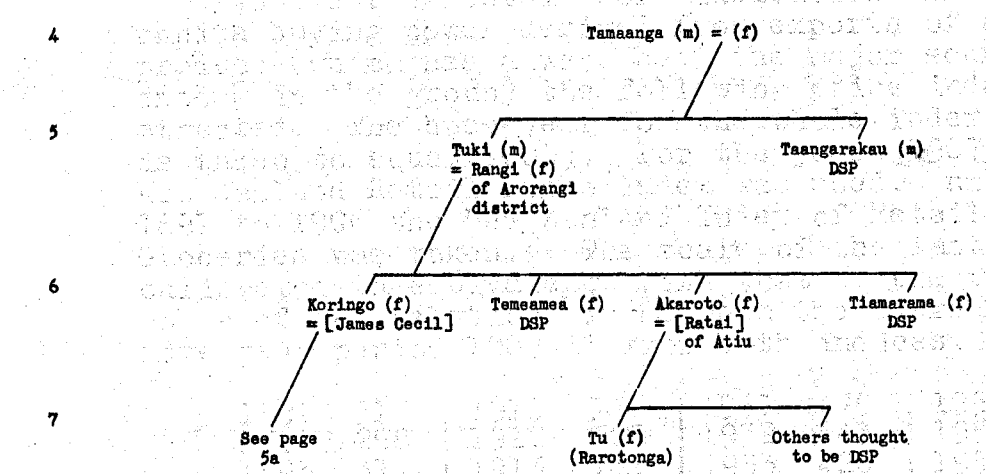

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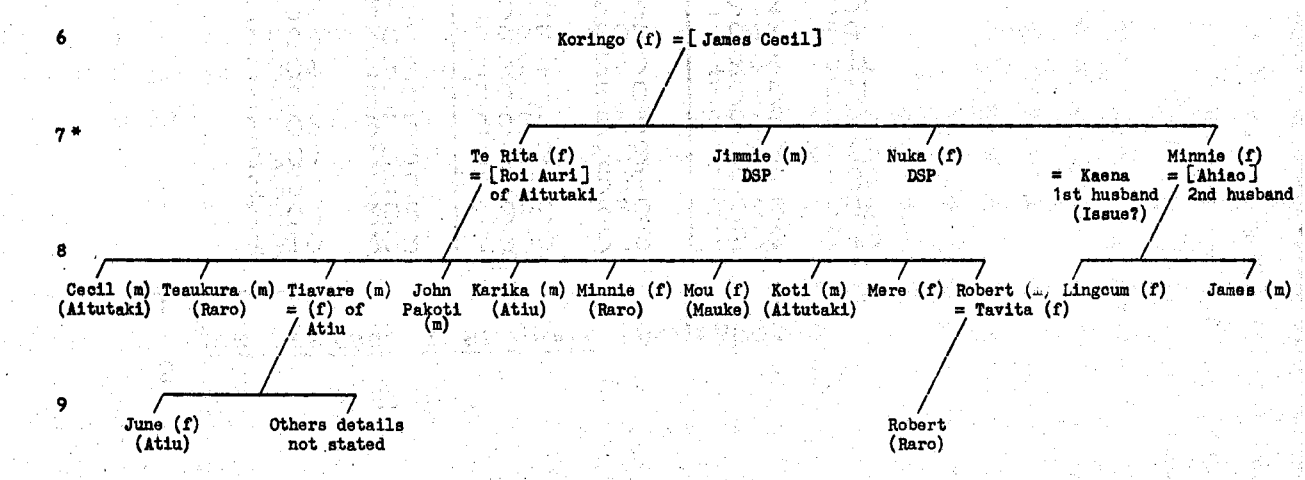

*Some variation in order of birth in 7th generation.

X61-120

Appendix C

PRICE INDEX FOR THE COOK ISLANDS 1891-1959

In equating the buying power of money at different periods of time absolute precision can never be attained, but even a reasonable degree of equivalence can enable comparison over time, and at least indicate the direction of trends in buying power. In the case of the Cook Islands, during the whole period from 1891 to 1959 the great bulk of its trade has been with the mainland of New Zealand. As almost all consumption goods which are purchased for cash were imported from the mainland, the relative buying power of the pound in the Cook Islands has been closely geared to New Zealand prices. Admittedly the relative proportions of various consumption items differ somewhat between the mainland and the islands but in general there appears to have been a close correlation in relative purchasing power between the two places.

In order to obtain some indication of trends in per capita buying power derived from exports of agricultural produce (which has always been the major source of cash income in the group) the following price index was constructed. The base year for the whole index is 1955 (which is taken to equal 1000). For the years 1907 to 1959 the New Zealand Retail Price Index was used,[1] and for the years 1891 to 1906 the New Zealand Index of Retail Prices for Groceries was taken.[2] The scale of the latter index was calibrated to equivalence with that of the former on the basis of the relationship between the averages for the five-year period 1909-13 from both indices.

1891	312	1911	306	1931	479	1951	828
1892	298	1912	315	1932	443	1952	892
1893	314	1913	322	1933	420	1953	933
1894	301	1914	332	1934	427	1954	976
1895	287	1915	357	1935	442	1955	1000
1896	295	1916	382	1936	456	1956	1035
1897	305	1917	415	1937	488	1957	1057
1898	314	1918	449	1938	502	1958	1104
1899	285	1919	482	1939	523	1959	1146
1900	295	1920	538	1940	547		
1901	302	1921	546	1941	567		
1902	316	1922	503	1942	586		
1903	306	1923	507	1943	599		
1904	299	1924	520	1944	610		
1905	330	1925	530	1945	618		
1906	333	1926	533	1946	623		
1907	308	1927	529	1947	643		
1908	309	1928	531	1948	694		
1909	305	1929	530	1949	706		
1910	308	1930	518	1950	745		

[1] New Zealand Year Book 1960:986.

[2] Ibid. 1915:766.

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